SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 340

ETIENNE DUGAS, PETITIONER,

vs.

AMERICAN SURETY COMPANY OF NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

INDEX.

	Page
Record from D. C. U. S., Eastern Louisiana	1
Caption	1
Petition and bill of interpleader and order	2
Exhibit "1A"—Affidavit of Harry McCall	10
Temporary restraining order	11
Order to show cause why preliminary injunction should not issue	13
Exhibit—Judgment in case Etienne Dugas vs. American Sur. Co. of New York, La. State Court, No. 188-642	14
Exhibit—Suspensive appeal bond in case Etienne Dugas vs. American Surety Co. of New York, La. State, Court, No. 188-642	16
Exhibit—Qualifying bond of Lumbermen's Reciprocal Association with American Surety Co. of N. Y. as Surety, filed in Civil District Court	17
Exception of Etienne Dugas, defendant, of no right or cause of action	19
Plea of estoppel of defendant, Etienne Dugas	20
Answer of defendant, Etienne Dugas	22
Claim of defendant, Etienne Dugas, in Concursus proceedings	27
Interlocutory injunction	31

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Record from D. C. U. S., Eastern Louisiana—Continued. Page
Decree on petition and bill of interpleader, etc. 32
Abstract of findings from report of special master. 33
Distribution 34
Summary of allowances 35
Tableau of Distribution 35
Joint stipulation of counsel acquiescing in report of special master, and order of court confirming report of special master and that distribution of funds be made, etc. 37
Exhibit—Record in Case, Etienne Dugas vs. New York Casualty Company, La. State Court, No. 206-309. 39
Petition 39
Amended and supplemental petition 44
Exception of defendant to plaintiff's petition. 46
Judgment 49
Petition for removal and order denying same. 50
Bond for removal 53
Notice of removal 55
Exhibit—Opinion of the Supreme Court of Louisiana in case Etienne Dugas vs. New York Casualty Company, No. 32,960 56
Exhibit—Application of New York Casualty Co., defendant, for rehearing in case Etienne Dugas vs. New York Casualty Co., Louisiana Supreme Court, No. 32,960. 66
Petition of American Surety Co. of N. Y., plaintiff, and order to show cause why preliminary injunction should not issue. 68
Exception of defendant Etienne Dugas to jurisdiction. 79
Bill of exception to ruling of the court overruling exception to jurisdiction 82
Plea of exception of Etienne Dugas, defendant, to right of propriety of issuing writ of injunction, etc. 84
Bill of exception to ruling of court overruling plea to propriety of issuing of writ of injunction, etc. 88
Exception of defendant Etienne Dugas of no right or cause of action 89
Bill of exception to ruling of Court overruling exceptions of no right or cause of action. 91
Answer of defendant Etienne Dugas to the merits. 92
Preliminary injunction 98
Bill of exceptions reserved to the judgment of the court granting plaintiff injunctive relief 99
Joint stipulation of counsel that matter be submitted on same pleadings subject to all bills of exception and on same evidence as application for preliminary injunction. 100
Decree 101
Findings of fact and conclusions of law. 103
Petition for appeal, order allowing same and fixing amount of bond 107
Assignment of errors 108
Appeal bond 112
Præcipe for record 113
Clerk's certificate 117

	Page
Proceedings in U. S. C. C. A., Fifth Circuit	118
Minute entry of argument and submission	118
Opinion, Walker, J.	118
Dissenting opinion, Sibley, J.	125
Judgment	128
Order extending time to file petition for rehearing	128
Petition for rehearing (omitted in printing)	130
Order denying petition for rehearing	130
Clerk's certificate	130
Order allowing certiorari	131

UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

No. 20,782 (In Equity).

AMERICAN SURETY COMPANY OF NEW YORK,

versus

ETIENNE DUGAS, ET ALS.

Appearances:

Messrs. I. E. Uzzo and James J. Landry, Attorneys for Etienne Dugas, Appellant.

Messrs. Denegre, Leovy & Chaffe, Attorneys for American Surety Company of New York, Appellee.

APPEAL from the District Court of the United States for the Eastern District of Louisiana, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable within thirty (30) days from the 23rd day of May, 1935, at the City of New Orleans, Louisiana.

Extensions of time granted by the Honorable the United States Circuit Court of Appeals for the Fifth Circuit, bringing the return day up to and including the 15th day of November, 1935.

TRANSCRIPT OF THE RECORD.

PETITION AND BILL OF INTERPLEADER.

2 Filed June 6, 1931.

United States District Court, Eastern District of Louisiana, New Orleans Division.

American Surety Company of New York,
vs. No. 20782.
Etienne Dugas, et als.

To the Honorable the United States District Court for the Eastern District of Louisiana:

The petition and bill of interpleader of the American Surety Company of New York respectfully shows:

1.

American Surety Company of New York, plaintiff herein, now is, and at all times hereinafter mentioned was, a corporation organized and existing under the laws of the State of New York, domiciled in the City of New York in the said State, doing business as a surety company in New York and other states of the Union, including Louisiana, in which latter state plaintiff was and is qualified to do business, having complied with all of the applicable laws of the said state as to foreign corporations.

2.

On February 12, 1930, plaintiff executed as surety a bond for Lumberman's Reciprocal Association (a corporation organized and existing under the laws of the State of Texas and domiciled in the City of Houston in the said State) as principal in the penal sum of Twenty Thousand Dollars ($20,000.00) in favor of the Governor of the State of Louisiana conditioned

that the said Lumberman's Reciprocal Association shall make prompt payment of all claims arising and accruing to any person during the term of said bond, by virtue of any policy, or policies, issued by it upon the life or person of any citizen of the State of Louisiana, or upon any property situated in said state, whenever such payment may become due, and shall faithfully comply with and perform all and singular the duties and obligations imposed upon it, under and by reason of the provisions of an Act of the General Assembly of the State of Louisiana, approved July 3rd, 1908, Act 172, and entitled "An Act requiring fire, life, accident and other kinds of Insurance Companies, other than Surety and Fidelity and Fraternal Societies, and Insurance Companies insuring against the breakage of plate glass only organized under the laws of other States, to give bond payable to the State Treasurer conditioned for the prompt payment of all claims arising in this State, and providing penalties for the Enforcement of this Act." which said bond was duly filed with and accepted by the Secretary of State of the State of Louisiana. Said association had been doing business in Louisiana for several years and had similarly furnished several similar bonds similarly filed and accepted. Each of said bonds, under the provisions of said Act 172 of 1908 and under the law, was canceled by its successor, the last thereof being
3 canceled by the bond executed on February 12, 1930, hereinabove described.

A copy of the said bond is attached hereto as part hereof, marked Surety 1.

3.

The business of said Lumberman's Reciprocal Association which was chiefly the writing of workmen's compensation insurance brought it within the description of "all fire, life, accident and other kinds of in-

surace companies other than fidelity and surety and fraternal societies and insurance companies insuring against the breakage of plate glass only" as contained in the Louisiana Statute referred to in the bond, copy of which is attached hereto, marked Surety 1.

4.

On July 31, 1930, one Wright Morrow was by the Ninety Eighth District Court for Travis County, Texas, in the matter entitled State of Texas vs. Lumberman's Reciprocal Association, No. 48,596 of the Docket of the said Court, appointed Receiver of said Lumberman's Reciprocal Association, and said Association is still in the hands of said Receiver.

5.

There are two suits pending against petitioner under its said bond of February 12, 1930. One of these suits is entitled Etienne Dugas vs. American Surety Company of New York, No. 188-642 of the Docket of the Civil District Court for the Parish of Orleans, State of Louisiana, and in it a judgment was on April 14th, 1931, entered in favor of the plantiff therein against the defendant therein (the plaintiff herein) requiring the payment of $20.00 a week for a period not to exceed three hundred weeks, as will more fully appear from copy of the said judgment hereto attached as part hereof and marked, Surety 2. The said judgment being duly signed the defendant, your plaintiff, obtained an order of appeal to the Court of Appeal for the Parish of Orleans, in which Court the matter is now set down for argument on June 9, 1931.

The other of the two pending suits is entitled Hardy B. Brown vs. Weber-King Manufacturing Company, No. 7845 of the 11th Judicial Court for the Parish of

Vernon, State of Louisiana. In that case the said Brown brought suit against his employer, Weber-King Manufacturing Company, for compensation for a period of four hundred weeks at the rate of $13.65 a week, and the said employer has called your plaintiff as a defendant in warranty. The said suit has been set for trial at Leesville, Louisiana, June 15, 1931.

6.

Plaintiff avers on information furnished by the Receiver of the Lumberman's Reciprocal Association that the claims against its said bond of February 12, 1930, are far in excess of the amount of the said bond, and plaintiff therefore desires to deposit in the Registry of this Court the amount of its said bond and to call in the various claimants to assert their claims against the said fund.

4

7.

Of the claimants Williams Brothers, Inc., now is and at all times herein mentioned was a citizen of the State of Nevada, being domiciled in the City of Reno in the said State; and Howard Kenyon Dredging Company now is and at all times herein mentioned was a citizen of the State of Texas, being domiciled in the City of Houston in the said State; and S. Glasper now is and at all times herein mentioned was a citizen of the State of Texas, domiciled in the City of Rayville in the said state; and Rosie McCaa now is and at all times herein mentioned was a citizen of the State of Oklahoma, being domiciled in the City of Oklahoma City in the said state.

8.

Of the claimants Jules Sentiere now is and at all times herein mentioned was a citizen and resident of the State of Louisiana, domiciled in the City of Frank-

lin in the Parish of St. Mary in the State of Louisiana; and Bill Lawson now is and at all times herein mentioned was a citizen and resident of the State of Louisiana, domiciled in the City of New Orleans in the State of Louisiana; and Paul Augustine now is and at all times herein mentioned was a citizen and resident of the State of Louisiana, domiciled in the City of New Orleans, in the State of Louisiana; and the Douglas Public Service Corporation now is and at all times herein mentioned was a citizen and resident of the State of Louisiana, being a corporation organized and existing under the laws of the said state and domiciled in the City of New Orleans in the State of Louisiana.

9.

This Court has jurisdiction because this is a bill of interpleader in equity brought by a surety company against bona fide adverse claimants against its bond of February 12, 1930, two or more of whom are citizens of different states, and one or more of said adverse claimants resides or reside within the territorial jurisdiction of this Court, all within the provisions of Act of Congress of May 8, 1926, entitled "An Act authorizing casualty companies, surety companies, insurance companies or associations or fraternal or beneficial societies to file bills of interpleader" 44 Stat. at Large, p. 416.

10.

Plaintiff disclaims any interest in the amount of its said bond except to pay same to the persons lawfully entitled thereto and is desirous of paying the amount of its said bond into Court for distribution among those lawfully entitled thereto after the payment of all lawful costs.

11.

By reason of the conflicting claims against the said bond, and the fact that claims already known to plaintiff greatly exceed the amount of the said bond, plaintiff is in grave danger of being greatly harrassed and damaged, and cannot safely make payments to any claimant without the aid of this Court.

12.

Plaintiff, with the permission of this Court first obtained, has paid into the Registry of this Court the said sum of $20,000.00, the amount of said bond, to abide the judgment of this Court.

13.

Plaintiff has as yet had comparatively few claims with it against its said bond; but it attaches hereto as part hereof marked Surety 3, a list of claimants (including those filed with it) and the address of each based on information furnished it by the Receiver of the Lumberman's Reciprocal Association as valid claims; and plaintiff desires that each of the said claimants be cited as a defendant herein. Plaintiff avers on information and belief that all of said claims are bona fide claims. Plaintiff has no information as to the existence of any other claimants.

On the said list plaintiff has indicated by the letter (a) the name of each assured or employer and by the letter (b) the name of each employee or claimant other than the assured. All claims marked (b) grow out of the policy or policies issued by the Lumberman's Reciprocal Association to the assured or employer listed just above the claims so marked (b).

Plaintiff is unable to show as to each corporate claimant full information as to the state under whose laws it was organized or its domicile, but plaintiff submits that this is immaterial in the present case (full information being given as to more than enough claimants to establish jurisdiction) and plaintiff has given all information within its possession at this time.

Plaintiff shows also on the said list the amount of some of the said claims based on information furnished it by the Receiver of the Lumberman's Reciprocal Association, but as to many of the claims plaintiff has no such information and has no independent knowledge of the correctness of the amounts that are shown.

Wherefore, plaintiff prays,

1. That it be authorized and directed to deposit in the Registry of this Court the sum of $20,000.00.

2. That Etienne Dugas and Weber-King Manufacturing Company, Incorporated, and all of the other claimants shown on the list hereto attached marked Surety 3 be cited to interplead and settle between themselves their rights or claims to the amount of plaintiff's bond deposited herein as aforesaid.

3. That said Etienne Dugas and Weber-King Manufacturing Company, Incorporated, and the other defendants herein be temporarily restrained and enjoined by order of this Court from instituting or prosecuting in any State Court or in any other Federal Court any suit on account of any right or claim growing out of said bond, or any similar previous bond, and that this injunction may be perpetuated by the final decree herein.

6 4. That an order be entered immediately restraining and enjoining Etienne Dugas and Weber-King Manufacturing Company, Incorporated,

and each of them, their attorneys and all persons acting under their authority, and each of them, from suing or taking any steps to sue or doing anything towards the prosecution of any suit or proceeding (and in particular their suits above referred to) in any State Court, or in any other Federal Court on any claim arising out of or connected with its bond dated February 12, 1930, or any similar previous bond.

5. That plaintiff be released from all further liability on account of said bond, or any similar previous bonds, upon a determination being had as to the amount due thereon, and upon the payment by plaintiff of a sum, if any be found due thereon, over and above the fund heretofore paid into the Registry of this Court.

6. For all costs and a reasonable attorney's fee to be fixed by the Court and such other and further relief as may be necessary or proper in the premises.

(Signed) DENEGRE, LEOVY & CHAFFE,
Attys.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came and appeared Lawrence P. McGee, who, being first duly sworn, deposes and says that he is the Resident Manager of American Surety Company of New York, and that all superior officers are absent from the State of Louisiana; affiant further deposes and says that he has read the foregoing petition and that the facts and allegations therein contained are true and correct to the best of his knowledge, information and belief, and that he verily believes the same to be true and correct.

(Signed) LAWRENCE P. McGEE.

Sworn to and subscribed before me at New Orleans, Louisiana, this the 5th day of June, 1931.

(Signed) LLOYD A. RAY,
(Seal) Notary Public.

7 State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came and appeared Harry McCall, who, being first duly sworn, deposes and says that he is a member of the law firm of Denegre, Leovy and Chaffe, attorneys for the American Surety Company of New York, plaintiff in this matter; affiant further deposes and says that the facts and allegations set forth in the above petition are true and correct to the best of his knowledge, information and belief, and that he verily believes the same to be true and correct; affiant further deposes and says that he is personally familiar with the proceedings in the suits of Etienne Dugas vs. American Surety Company of New York, No. 188-642 of the Docket of the Civil District Court for the Parish of Orleans, State of Louisiana, and No. 13,886 of the Docket of the Court of Appeal for the Parish of Orleans, State of Louisiana, and with the proceedings in the matter of Hardy B. Brown vs. Weber-King Manufacturing Company, Incorporated, No. 7845 of the Docket of the 11th Judicial Court for the Parish of Vernon, State of Louisiana; that affiant has personally handled the defense of the American Surety Company of New York in the Dugas Suit and that it is absolutely essential that a restraining order be obtained preventing any further action in the said suit which is set down for hearing before the Court of Appeal for the Parish of Orleans, State of Louisiana, on June 9th, 1931.

As to the suit of Hardy B. Brown vs. Weber-King Manufacturing Company, Inc., above stated, affiant shows that this matter is set down for trial before the 11th Judicial Court for the Parish of Vernon, State of Louisiana, on June 15th, 1931, and it is therefore essential that an order be obtained restraining the further prosecution of that suit. Affiant is of counsel for defendant, although not counsel of record

in said suit, and is personally familiar with the pleadings and proceedings therein. As to the remaining allegations of said petition, affiant shows that his knowledge is based on data obtained from the Receiver of the Lumberman's Reciprocal Association and that affiant believes the same to be true and correct.

(Sgd.) HARRY McCALL.

Sworn to and subscribed before me at New Orleans, La., on this the 5th day of June, 1931.

(Sgd.) LLOYD A. RAY,
(Seal) Notary Public.

ORDER.

Considering the foregoing petition and the affidavit thereto, it is ordered that the plaintiff American Surety Company of New York be and it hereby is authorized to deposit in the Registry of this Court the sum of Twenty Thousand Dollars ($20,000.00).

(Signed) WAYNE G. BORAH, Judge.

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8. TEMPORARY RESTRAINING ORDER.

Filed June 6, 1931.

(Title Omitted.)

Upon reading the bill of complaint and affidavits herein, and it appearing from the facts shown by the verified bill that before notice can be served and a hearing had on plaintiff's application for a preliminary injunction herein, or on plaintiff's application for a restraining order, immediate and irreparable injury, loss and damage will result to the plaintiff, to-wit, that proceedings will be taken in the following suits

pending against plaintiff in which separate claims are asserted against the very bond, the full amount of which is herein deposited:

Etienne Dugas vs. American Surety Company of New York, No. 188-642 of the Docket of the Civil District Court for the Parish of Orleans, State of Louisiana, and No. 13-886 of the Docket of the Court of Appeal for the Parish of Orleans, State of Louisiana, and

Hardy B. Brown vs. Weber King Manufacturing Company, Incorporation, No. 7845 of the Docket of the Eleventh Judicial District Court for the Parish of Vernon, State of Louisiana.

and that as a result of such proceedings plaintiff will be subjected to a multiplicity of litigation and exposed to a possibility of double liability.

Now, Therefore, It Is Ordered, Adjudged and Decreed, that Etienne Dugas and Weber King Manufacturing Company, Incorporated, defendants herein, and each of them, their attorneys and all persons acting under their authority, and each of them, be, and each of them hereby is, restrained and enjoined from suing, or taking any steps to sue, or doing anything towards the prosecution of any suit or proceeding in any State Court or in any other Federal Court on any claim arising out of or connected with bond dated February 12, 1930, signed by the said Company as surety, and the Lumbermen's Reciprocal Association as principal, under and in accordance with Act No. 172 of the General Assembly of the State of Louisiana passed at the Regular Session of 1908, or any similar previous bond.

This restraining order shall become effective without the giving of security by the plaintiff.

This restraining order will remain in force only until the hearing and determination of the application for a preliminary injunction herein, and shall expire ten days after entry, unless within said time it is extended for a like period for good cause shown.

It is Further Ordered, that a copy of this order be served upon Etienne Dugas and Weber King Manufacturing Company, Incorporated, the defendants hereby restrained, and upon I. E. Uzzo and James J. Landry, attorneys of Etienne Dugas, and Thompson & Ferguson, attorneys of Weber King Manufacturing Company, Incorporated.

This order signed and issued this 5th day of June, 1931, at 3:00 o'clock P. M.

(Sig.) WAYNE G. BORAH, Judge.

ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE.

10 Filed June 6, 1931.

(Title Omitted.)

On motion of the plaintiff herein,

It Is Ordered, that the application for a preliminary injunction herein be heard in the Court room of the United States District Court at New Orleans, Louisiana, on June 24, 1931, at 10:00 o'clock, A. M., and that the defendants and each of them be ordered then and there to show cause if any they can, why a preliminary injunction should not issue as prayed for, restraining and enjoining them, and each of them, their attorneys and all persons acting under their authority from suing, or taking any steps to sue, or doing anything toward the prosecution of any suit or proceeding in any State Court or in any other Federal Court on any claim arising out of or connected with bond dated

February 12, 1930, signed by the American Surety Company of New York as surety and by the Lumbermen's Reciprocal Association as principal, under and in accordance with Act No. 172 of the General Assembly of the State of Louisiana, passed at the Regular Session of 1908, or any similar previous bond.

WAYNE G. BORAH, Judge.

New Orleans, Louisiana, June 5, 1931.

EXHIBIT BEING JUDGMENT OF CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS, IN MATTER ENTITLED "ETIENNE DUGAS VS. AMERICAN SURETY CO., No. 188-642.

11 Filed in U. S. Dist. Court Jun. 6, 1931.

Civil District Court Parish of Orleans, State of Louisiana.

No. 188-642 Division "A" Docket No. 4.

Etienne Dugas,
vs.
American Surety Company of New York.

Judgment

This cause came up for argument this day, Present:

I. E. Uzzo and James J. Landry, attorneys for plaintiff;

Harry McCall and J. H. Morrisson, Jr., attorneys for the defendant, American Surety Company of New York.

Lumbermen's Reciprocal Association and its Receiver, Wright Morrow.

When after considering the evidence, pleadings and argument of counsel, the law and the evidence being in favor of plaintiff, for the reasons orally assigned;

It Is Ordered, Adjudged and Decreed, that there be judgment in favor of plaintiff, Etienne Dugas, and against the defendant, the American Surety Company of New York, in the sum of twenty ($20.00) dollars a week, commencing May 15th, 1930, and such payments to continue until a total of not more then three hundred weeks have been paid, unless, as to future payments, this judgment be modified because of the improved condition of plaintiff health, and for all costs of this procedure.

It Is Further Ordered, Adjudged And Decreed, That There Be Further judgment in favor of plaintiff, Etienne Dugas and against the said defendant, American Surety Company of New York, in the sum of two hundred and fifty ($250.00) dollars, for medical bills, reserving to said defendant the right to pay
12 out of this sum, one hundred and sixty ($160.00) dollars, directly to the Charity Hospital and thus discharge itself, protanto, in so far as plaintiff, Eteinne Dugas, is concerned.

It Is Further Ordered, Adjudged And Decreed, that on the call in warranty of the American Surety Company of New York, there be judgment in favor of the said American Surety Company of New York, and against the defendant, Lumbermen's Reciprocal Association and its Receiver, Wright Marrow, as such, in solido, in the amount and to the same extent as is hereinabove rendered in favor of the plaintiff and against the said American Surety Company of New York.

Judgment read and rendered in open Court this 14th day of April, 1931.

Judgment read and signed in open Court this 20 day of April, 1931.

(Sgd.) H. C. CAGE,
Judge.

SUSPENSIVE APPEAL BOND IN 188-642 OF CIVIL DISTRICT COURT.

13 Filed in U. S. Dist. Court June 6, 1931.

Know All Men By These Presents, That we, American Surety Company of New York, as principal, and New York Casualty Company, State of New York, as surety, are held and firmly bound unto John J. O'-Neill, Clerk of the Civil District Court, for the Parish of Orleans, his successors, executors, administrators and assigns, in the sum of Ten Thousand and 00/100 ($10,000.00) dollars for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents sealed with our seal and dated in the City of New Orleans on this 27th day of April, in the year of our Lord one thousand nine hundred and thirty-one.

Whereas, the above bounden American Surety Company of New York has this day filed a motion of appeal from a final judgment rendered against American Surety Company of New York, in the suit of Etienne Dugas versus American Surety Company of New York. No. 188,642 of the Civil District Court for the Parish of Orleans on the 14th day of April 1931, and signed on the 20th day of April 1931.

Now The Condition of the Above Obligation is Such, That the above bounden American Surety Company of New York shall prosecute diligently its appeal, and shall satisfy whatever judgment may be rendered

against it or that the same shall be satisfied by the proceeds of its estate real or personal, if it be cast in the appeal, otherwise that the said New York Casualty Company, State of New York, shall be liable in its place.

AMERICAN SURETY COMPANY OF NEW YORK,
By H. McGEE,
Manager.
NEW YORK CASUALTY COMPANY,
By HILTON SANDOZ,
Res. Vice President.

Attest:

WALKER A. GARROTT,
Res. Assistant Secretary.

Bond No. 5923-E.

Signed, sealed and delivered in the presenc of:
J. H. MORRISON,
C. E. GRANDER.

QUALIFYING BOND OF LUMBERMEN'S RECIPROCAL ASSOCIATION WITH AMERICAN SURETY CO. OF N. Y. AS SURETY.

14 Filed June 6, 193.

Bond Under Act 172 of 1908.

State of .....,
Parish (or County) of .....,
City of .....

Know all Men by These Presents, That we, Lumbermen's Reciprocal Association Insurance Company as principal and American Surety Company of New

York, Surety Company, as surety, are held firmly bound unto His Excellency Huey P. Long, Governor of Louisiana, or his successors in office, in the following sums, to-wit:

Lumbermen's Reciprocal Association Insurance Company as principal in the full sum of Twenty Thousand Dollars ($20,000.00) and American Surety Company of New York Surety Company, in the full sum of Twenty Thousand Dollars ($20,000.00), current money of the United States of America, which we promise to pay him or to his successors in office, for faithful performance of which we bind ourselves by these presents for the amount of the bond thus entered into by us.

Conditions of this Bond.

Now, Therefore, if the said Lumbermen's Reciprocal Association Insurance Company shall make prompt payment of all claims arising and accruing to any person during the term of said bond, by virtue of any policy, or policies, issued by it upon the life or person of any citizen of the State of Louisiana, or upon any property situated in said State, whenever such payment may become due, and shall faithfully comply with and perform all and singular the duties and obligations imposed upon it, under and by reason of the provisions of an Act of the General Assembly of the State of Louisiana, approved July 3rd, 1908, Act 172, and entitled,

"An Act requiring fire, life accident and other kinds of Insurance companies, other than surety and fidelity and fraternal societies, and insurance companies insuring against breakage of plate glass only organized under the laws of other States, to give bond payable to the State Treasurer conditioned for the prompt payment of all claims arising in this State, and providing penalties or the enforcement of this Act."

then this obligation shall become null and void; otherwise to remain in full force and effect.

In faith whereof, We have signed these presents at Houston, Texas, this 12th. day of February, 1930,

LUMBERMEN'S RECIPROCAL ASSOCIATION,
By CHRISTIE & HOBBY, INC.,
Atty-in-Fact.
C. S. MOHILL,
Vice-President,
As principal for $20,000.00.
AMERICAN SURETY COMPANY OF N. Y.,
By W. W. SCHOELMAN,
Attorney-in-Fact,
As surety for $20,000.00.
By B. D. DODGE,
(Seal) Countesignor.

in presence of:

M. B. RANKIN.

.....

Countersigned:
By HILTON SANDOZ,
At New Orleans, La.

EXCEPTION OF ETIENNE DUGAS OF NO RIGHT OR CAUSE OF ACTION.

15 Filed Jun. 23, 1931.

(Title Omitted.)

Now into Court, comes Etienne Dugas, made one of the defendants herein, and appearing first, solely for

the purpose of excepting to complainant's bill, respectfully shows, that the bill of complaint herein filed discloses no right or cause of action; and, that it particularly discloses no ground for a bill of interpleader, nor for the injunctive relief prayed for therein.

Wherefore, defendant, Etienne Dugas, prays that these exceptions be maintained; that the said bill of complaint or interpleader, herein filed, be dismissed at complainant's cost, insofar as this defendant is concerned and that the injunctive relief prayed for, be denied.

(Signed) I. E. UZZO & JAMES J. LANDRY,
Attorneys for Defendant.

I hereby certify that I am one of the attorneys for Etienne Dugas, one of the defendants herein; that the foregoing exceptions are in my opinion well founded in law and equity and are not filed merely for the purposes of delay.

(Sgd.) JAMES J. LANDRY.

---

16 PLEA OF ESTOPPEL.

Filed Jun. 23, 1931.

Plea of Estoppel.

(Title Omitted.)

Now into Court, comes Etienne Dugas, made one of the defendants herein, and reserving all of his rights under the exceptions heretofore filed, should same be

overruled and especially pleads estoppel to the right of plaintiff to implead him herein, for the following reasons, to-wit:

1.

That by reason of a final judgment rendered by the Civil District Court for the Parish of Orleans, State of Louisiana, No. 188-642 of the docket of said Court, in the proceedings entitled, Etienne Dugas vs. American Surety Company of New York, rendered on the 14th. day of April, 1931 and signed on the 20th. day of April, 1931, a certified copy of which is made a part of and attached to bill of complaint herein and is made part hereof as if copied in existenso, the plaintiff in these proceedings was cast as shown by copy of said judgment, after a full and fair hearing, all parties being present; the plaintiff itself being benefited by said judgment to the full extent prayed for by itself, except to the extent that it was cast in judgment in favor of this defendant.

2.

That in order to suspend the execution of said judgment, the plaintiff herein did appeal from the said judgment in accordance with the laws of Louisiana and did execute its obligation, separate and distinct from the original obligation sued on, in the sum of $10,000.00, that it would diligently prosecute said appeal and gave security conditioned to that effect and further that the plaintiff herein would satisfy any judgment rendered against it by the Court of Appeals, all as will more fully appear by reference to a duly certified copy of said bond hereto attached and made a part hereof.

3.

That the plaintiff by reason of the foregoing facts and various other allegations of its petition, is not and

cannot be impartial nor said to be without interest in the distribution of said fund.

Wherefore, defendant prays that this plea of estoppel be maintained and that the plaintiff's bill of interpleader be dismissed insofar as, he, Etienne Dugas is concerned, at plaintiff's cost.

(Sgd.) I. E. UZZO & JAMES J. LANDRY,
Attorneys for Defendant.

17 State of Louisiana,
Parish of Orleans.

Before Me, the undersigned authority, personally came and appeared, James J. Landry, who being duly sworn, deposes and says:

That he is one of the attorneys for the defendant hereinabove named; that he has prepared the foregoing plea of estoppel; that the allegations of fact therein contained are true and correct to the best of his knowledge and belief; that the defendant Etienne Dugas, resides in the Parish of Iberia, Louisiana, is ill and unable to conveniently appear for the purpose of making this affidavit.

(Sgd.) JAMES J. LANDRY.

Sworn to and subscribed before me this 20th. day of June, 1931.

(Sgd.) I. E. UZZO,
(Seal) Notary Public.

---

18 ANSWER OF ETIENNE DUGAS.

Filed June 23, 1931.

(Title Omitted.)

And now into Court, comes Etienne Dugas, made one of the defendants herein, first reserving all of his

rights under the exceptions and plea of estoppel, heretofore filed, should same be overruled, and in obedience to an order signed by this Honorable Court, on the 5th. day of June, 1931, to show cause why a preliminary injunction should not issue herein, as prayed for by plaintiff, with respect, shows:

1.

That he admits the allegations of Art. 1, of the bill of interpleader.

2.

That he admits the allegations of Art. 2, of the bill of interpleader.

3.

That he admits the allegations of Art. 3, of the bill of interpleader.

4.

That he admits the allegations of Art. 4, of the bill of interpleader.

5.

That he admits the allegations of the first paragraph of Art. 5, of the bill of interpleader and further alleges that the judgment therein referred to, was signed on the 20th. day of April, 1931; that thereupon, as alleged by plaintiff, it appealed from the said judgment and suspended execution thereon by executing its bond, made payable to the Clerk of the Civil District Court for the Parish of Orleans, State of Louisiana or his successors in office, with the New York Casualty Company as surety thereon in the sum of $10,000.00, con-

ditioned that the plaintiff herein would diligently prosecute said appeal and satisfy such judgment as might be finally rendered against it, all as will be more fully seen by reference to a duly certified copy of said bond, hereto attached and made a part hereof as if reiterated herein in extenso.

For lack of sufficient information to justify belief, the defendant denies the allegations of the second paragraph of plaintiff's bill of interpleader.

6.

That for lack of sufficient information to justify belief, the defendant denies the allegations of Art. 6, of plaintiff's bill of interpleader, but alleges that even were they true, these would afford no ground for a bill of interpleader, in that, this article fails to allege that any demands have been made upon plaintiff, to satisfy the claims therein referred to.

19

7.

That for lack of sufficient information to justify belief, this defendant denies Art. 7, of the plaintiff's bill of interpleader.

8.

That for lack of sufficient information to justify belief, this defendant denies Art. 8, of plaintiff's bill of interpleader.

9.

That for lack of sufficient information to justify belief, this defendant denies Art. 9, of plaintiff's bill

of interpleader and further alleges that this is more certainly so, insofar as this defendant is concerned, for the reasons that the plaintiff has had its day in Court and has suffered judgment to be rendered against it and has further executed a separate and distinct obligation to this defendant, as more fully shown by defendant's answer to the first paragraph of Art. 5, of said bill of interpleader.

10.

This defendant denies the allegations of Art. 10, of plaintiff's bill of interpleader, for the following reasons, to-wit:

1. Plaintiff having permitted judgment to be rendered against it by this defendant, cannot now claim that it is without interest in said fund.

2. That the sole and only purpose of this bill of interpleader is an attempt to deprive this defendant of the advantage gained by him by reason of the judgment referred to and made part of Art. 5, of plaintiff's bill of interpleader.

3. That plaintiff is estopped by reason of its bond and distinct obligation, hereinabove referred to in answer to the first paragraph of Art. 5, of plaintiff's bill of interpleader.

11.

That for lack of sufficient information to justify belief, this defendant denies Art. 11, of plaintiff's bill of interpleader and more especially is this so, insofar as this defendant is concerned, for the reasons stated in answer to Art. 10, of said bill of interpleader.

12.

This defendant admits the allegations of Art. 12, of plaintiff's bill of interpleader.

13.

In answer to Art. 13, of plaintiff's bill of interpleader, this defendant admits that the list of claimants therein referred to, indicates the facts alleged, but, for lack of sufficient information to justify belief, denies that they are true.

This defendant admits that there are comparatively few, if any, claims, made against plaintiff herein on said bond, and alleges that the total of the claims actually made against said bond, do not exceed the sum of $20,000.00.

This defendant further denies the allegations of the last paragraph of Art. 13, of plaintiff's bill of interpleader, but alleges that even if it were true, it discloses no reason or cause why this defendant should be impleaded herein.

Wherefore, this defendant prays that the restraining order herein issued be recalled and that the rule nisi to show cause why an injunction should not issue herein be dismissed and the injunction refused at plaintiff's cost.

And for all general and equitable relief and such further orders as the Court may deem necessary and proper in the premises.

(Sgd.) I. E. UZZO & JAMES J. LANDRY,
Attorneys for Defendant.

State of Louisiana,
Parish of Orleans.

Before Me, the undersigned authority, personally came and appeared, I. E. Uzzo, who after being duly sworn, deposes and says:

That he is one of the attorneys for the defendant hereinabove named; that he has prepared the foregoing answer; that the allegations of fact therein contained are true and correct to the best of his knowledge and belief; that the defendant Etienne Dugas, resides in the Parish of Iberia, Louisiana, is ill and unable to conveniently appear for the purpose of making this affidavit.

(Sgd.) I. E. UZZO.

Sworn to and subscribed before me, this 20th. day of June, 1931.

(Sgd.) JAMES J. LANDRY,
(Seal) Notary Public.

CLAIM OF ETIENNE DUGAS IN CONCURSUS PROCEEDINGS.

21 Filed Oct. 28, 1932.

(Title Omitted.)

To the Honorable United States District Court in and for the Eastern District of Louisiana:

Now into Court through undersigned counsel comes Etienne Dugas, the titular defendant herein and reserving all of the rights he has or may have under the exception, plea of a estoppel and answer to the peti-

tion and the remedy of interpleader, and in order to make proof of this claim, with respect shows:

1.

That, as shown by a certified copy of his petition in the matter entitled Etienne Dugas versus American Surety Company of New York and Lumberman's Reciprocal Association, bearing the number 188-642 of the docket of the Civil District Court in and for the Parish of Orleans, State of Louisiana, attached hereto and made part hereof, your claimant is entitled to participate in the distribution of the funds deposited herein; that your claimant further attaches hereto a certified copy of the judgment rendered in the proceedings herein above referred to on April 14, 1931, and signed in open Court this 20th day of April, 1931, and, make same part hereof as if reiterated in extenso, which said judgment has never been modified or changed.

2.

Now your claimant shows that the said American Surety Company of New York did, on the 27th day of April, 1931, appealed suspensively from the above alleged judgment, to the Court of Appeal for the Parish of Orleans, State of Louisiana, and did complete said appeal by filing a bond with good and solvent surety, according to law, in the sum of ten thousand dollars ($10,000), and did, on the 27th day of April, 1931, file a complete transcript of the afore referred to proceedings in the said Court of Appeal for the Parish of Orleans, and subsequently the said American Surety Company began these proceedings of interpleader and obtained an injunction restraining your claimant from further proceeding in said cause.

22 3.

Claimant now shows that he has never received any sum whatsoever on account of the compensation

or medical bills or costs under the said judgment of the Civil District Court, Parish of Orleans, and that he is up to the present time incapacitated so as to classify him as being permanently and totally disabled under the compensation law of the State of Louisiana:

4.

The claimant further shows that he has expended in the proceedings in the Civil District Court herein above referred to the sum of $225.00 dollars.

Wherefore, claimant prays, first, that his claim in the sum of twenty dollars a week commencing May 15, 1931, and such payments to continue until a total of not more than three hundred weeks have been paid, unless as to future payments this judgment be modified because of the improved condition of plaintiff's health, and all cost of the proceedings in the Civil District Court, Parish of Orleans, amounting to the sum of $225.00 dollars, plus the sum of two hundred and fifty dollars for medical bills, out of which two hundred and fifty dollars, one hundred and sixty dollars to be paid to the Charity Hospital at the City of New Orleans, be allowed and paid to your claimant out of the funds here deposited by preference and priority. Second, your claimant prays in the alternative, that should the Court find that he is not entitled to be paid in full by preference and priority, then that his claim for the above amounts be recognized and that he be permitted to participate in the distribution of the fund herein deposited in common with the other claimants.

Claimant further prays in the alternative that whether his claim be allowed as a prior of privilege claim, or only as an ordinary claim to share in the distribution of the funds herein deposited in the proportion of his

claim to the total amount of claims, that he should be given judgment for the total amount of his compensation as in case of permanent total disability, with interest at the rate of five per cent per annum on back payments which have accrued and will have accrued up to the date of the final adjudication herein and discounting the future payments at the rate of eight per cent per annum, in a lump sum, all as provided by the compensation law of the State of Louisiana and for general and equitable relief and such orders as the Court may deem necessary and proper in the premises.

(Signed) I. E. UZZO,
JAMES J. LANDRY,
Attorneys for Claimant.

23 State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came and appeared, James J. Landry, who after being duly sworn, deposes and says:

That he is one of the attorneys for the cliamant, Etienne Dugas:

That he has prepared the foregoing claim and that all of the allegations therein contained are true and correct to the best of his knowledge, information and belief.

JAMES J. LANDRY.

Sworn to and subscribed, before me this 27th day of October, 1932.

(Seal) I. E. UZZO.

24 INTERLOCUTORY INJUNCTION.

Filed June 25, 1931.

(Title Omitted.)

This cause came on to be heard on June 24, 1931, upon the application of the plaintiff for an interlocutory injunction and was argued by counsel for the respective parties and submitted, when the Court took the same under advisement;

Whereupon, after having heard the pleadings the evidence offered and arguments of counsel and upon due consideration thereof;

It Is Now Ordered, Adjudged And Decreed that an interlocutory injunction be and the same is hereby granted without the necessity of plaintiffs furnishing any security, and

It Is Ordered, Adjudged And Decreed that the defendants on whom process has been served herein, and each of them and all persons acting under their authority, and each of them, be and each of them hereby is restrained and enjoined until the further orders of this Court from suing or taking any steps to sue or doing anything towards the prosecution of any suit or proceeding in any State Court or in any other Federal Court on any claim against the American Surety Company of New York arising out of or connected with bond dated February 12, 1930, signed by the said Company as surety and the Lumbermen's Reciprocal Association as principal under and in accordance with Act 172 of the General Assembly of the State of Louisiana passed at the regular session of 1908, or any similar previous bond.

(Signed) WAYNE G. BORAH,
Judge.

New Orleans, Louisiana, June 25, 1931.

DECREE ON PETITION AND BILL OF INTERPLEADER AND WRIT OF INJUNCTION RENDERED.

25 Signed and filed Sept. 19, 1932.

(Title Omitted.)

This cause having on June 15th, 1932, been (as to the rights, duties and obligations of the plaintiff, interpleader) submitted and duly argued and taken under advisement, upon consideration thereof and for the written reasons heretofore rendered;

It is Ordered, Adjudged and Decreed:

1. That the Motion to Dismiss of Hillyer Deutsch Edwards, Inc., be and the same is hereby denied.

2. That plaintiff, American Surety Company of New York, has, by the deposit of Twenty Thousand Dollars ($20,000.00) made in this cause, complied with all of its obligations under or on account of the bond dated February 12th, 1930, executed by it as surety and by the Lumbermen's Reciprocal Association as principal, said bond being in the penal sum of Twenty Thousand Dollars ($20,000.00) and being given under Act No. 172 of the General Assembly of the State of Louisiana, passed at the Regular Session of 1908, or under or on account of any similar previous bonds, and that said plaintiff, American Surety Company of New York, be and it is hereby released and discharged from any and all further liability on account of said bonds or any of them.

3. That all defendants hereby be and they hereby are perpetually restrained and enjoined from instituting or prosecuting in any State Court, or in any other Federal Court, any suit against said American Surety

Company of New York on account of any right or claim growing out of said bond, or any similar previous bond.

4. That there be allowed to plaintiff, American Surety Company of New York, to be paid to it, out of the sum deposited by it in the registry of this Court, the sum of One thousand, two hundred and 72/100 Dollars ($1200.72), as costs of Court herein expended by it up to the date of the hearing herein on June 15th, 1932, and all costs thereafter expended by it, and the further sum of Seven hundred and fifty dollars ($750.00) as counsel fees.

26 5. That A. Dallam O'Brien, Jr. be and he hereby is appointed as Special Master to determine the manner in which the balance of the fund remaining on deposit in the registry of this Court shall be distributed between the defendants herein.

(Signed) WAYNE G. BORAH,
Judge.

New Orleans, Louisiana, Sept. 19, 1932.

ABSTRACT OF FINDINGS FROM REPORT OF SPECIAL MASTER.

27 Filed Apr. 17, 1933.

(Title Omitted.)

To the Honorable Judge of the United States District Court for the Eastern District of Louisiana:

The Undersigned, A. Dallam O'Brien, Jr., who was appointed Master in the above entitled cause on The 19th day of September, A. D. 1932, to hear and report

to the Honorable Court his findings as to the proper manner in which the balance of the fund remaining on deposit in the registry of this Court should be distributed among the defendants herein, respectfully reports that on the 26th day of October, 1932, the 8th day of November, 1932, the 25th day of November, 1932, the 18th day of February, 1933, and again on the 11th day of March, 1933 he heard and received the evidence introduced by the parties hereto, and he respectfully submits the following report containing the findings of fact and the conclusions of law found by him, which he respectively presents as his report as Master in the above entitled cause.

Respectfully submitted,
(Sgd) A. DALLAM O'BRIEN, JR.,
Special Master.

April 17, 1933.

28 Distribution.

Etienne Dugas:

The judgment obtained by Dugas in the Civil District Court was for 300 weeks @ $20.00 per week under the terms of the Workman's Compensation Law.

May 15th, 1930 to Oct. 26th, 1932, 127 Weeks @ $20.00 per week	2540.00
173 weeks @ $8.00 per week or $1384.00 (40% disability) discounted at 8%	1273.28
Medical fees	250.00
Court costs	32.40
Expert testimony	65.00
Allowed	$4160.68

Disallowed:

173 weeks @ $12.00 per week or 60% of the claimed total disability. The evidence adduced (Tr. Nove. 8th, 1932, pp. 20-29) shows that a very slight disability, if

indeed any disability at all, at present exists, and that if such disability does so exist it is not discoverable objectively.

29 Summary of Allowances.

Etienne Dugas	4160.68
Montague Oil Co., Inc.	1420.00
Zenoria Lumber Co., Inc.	633.29
Hillyer Deutzch Edwards, Inc.	3712.48
Arkansas Natural Gas Corp.	5786.89
Mary G. Clay	3025.60
Anderson Post Hardwood Lbr. Co., Inc.	250.00
Marvin Morris	770.00
Roy O. Martin Lbr. Co., Inc.	3338.98
Grant Timber & Mfg. Co., Inc.	436.90
Harry R. Hawthorne	1985.52
Williams Bros., Inc.	17929.50
Sinclair Ref. Co. of La., Inc.	1276.48
Walter D. Landry & Will Gaskin	585.00
Grayson & Yeary Lbr. Co.	1983.44
T. J. Moss Tie Company	175.00
Farmer's Land & Canal Co., Inc.	42.36
W. E. Kolb	329.55
Weber-King Lbr. Co., Inc.	862.85
Farmer's Rice Milling Co., Inc.	43.92
Bennett Oil & Gas Co., Inc.	50.48
Weber-King Mfg. Co., Inc.	2279.05
Powell Lbr. Co., Inc.	223.33
Peavy-Wilson Lbr. Co., Inc.	6831.75
T. S. Grayson Lbr. Co.	2164.44
Total	60297.49

30 Tableau of Distribution.

Amount in the Registry of the Court		20,000.00
Costs allowed to the American Surety Co.	1,200.72	

Attorney's fees allowed American Surety Co.		750.00	
Fee of the Special Master		1,000.00	
One per cent (1%) to Clerk of Court		200.00	
Expenditures of Special Master:			
Telegrams	.79		
185 letters multigraphed	1.49		
150 Post cards multigraphed	1.13		
Stamps	15.23		
150 Post cards	1.50		
Clerical	10.00		
Stationery	15.05		
Miscellaneous	5.88	51.07	
Expenses to be reimbursed claimants		258.21	
		3,460.00	20,000.00
			3,460.00
			16,540.00

The total amount of claims allowed is $60,297.49, therefore the percentage to each claimant is 16,540.00 or .2743

60,297.49

Pro Rata Shares in Terms of Dollars & Cents:

Etienne Dugas	$ 1141.29
Montague Oil Company, Inc.	389.52
Zenoria Lumber Co., Inc.	173.72
Hillyer Deutzch Edwards, Inc.	1018.35
Arkansas Natural Gas Corp.	1587.37
Mary G. Clay	829.94
	$ 5140.19

31 Tableau of Distribution.

Carried over from preceding page	5140.19
Anderson Post Hdwd. Lbr. Co., Inc.	68.58
Marvin Morris	211.22
Roy O. Martin Lumber Co., Inc.	915.90
Grant Timber & Mfg. Co., Inc.	119.85
Harry R. Hawthorne	544.65
Williams Bros., Inc.	4918.07
Sinclair Ref. Co. of La.	350.15
Walter D. Landry & Will Gaskin	160.57
Grayson & Yeary Lbr. Co.	544.07
T. J. Moss Tie Company	48.01
Farmer's Land & Canal Co., Inc.	11.62
W. E. Kolb	90.40
Weber-King Lumber Co., Inc.	236.69
Farmer's Rice Milling Co., Inc.	12.06
Bennett Oil & Gas Co., Inc.	13.86
Weber-King Mfg. Co., Inc.	625.15
Powell Lbr. Co., Inc.	61.27
Peavy-Wilson Lbr. Co., Inc.	1873.97
T. S. Grayson Lbr. Co., Inc.	593.72
Total	$16,540.00

STIPULATION OF COUNSEL ACQUIESCING IN REPORT OF SPECIAL MASTER, AND ORDER OF COURT CONFIRMING JUDGMENT, AND THAT DISTRIBUTION OF FUNDS BE MADE, ETC.

32 Filed April 20, 1933.

(Title Omitted.)

It is hereby stipulated and agreed by the undersigned attorneys, representing all of the claimants who have

filed and or proved claims in the above entitled and numbered cause, that they acquiesce for and on behalf of their respective clients, in the report of the Special Master herein filed on the 17th day of April, 1933, and they do hereby waive the twenty (20) day's delay accorded them by Equity rule No. 66 for the filing of exceptions to the Master's report, and request the Court to confirm the report of the Special Master herein, as filed, and make it the judgment of this Court with delay, and further waive any and all legal delays.

HOWELL CARTER, JR.,
SPENCER, GIDIERE, PHELPS & DUNBAR,
MILLING, GODCHAUX, SAAL & MILLING,
WEISS, YARRUT & STICH,
WM. HERO,
A. GIFFEN LEVY,
DYMOND & LEVY,
ROSEN, KAMMER, WOLFF & FARRAR,
A. M. SUTHON,
ROBERT LAWES,
EUGIE V. PARHAM,
.....
I. E. UZZO & JAMES J. LANDRY,
Attys. for Etienne Dugas.

No objection Apr. 21, 1933.

DENEGRE, LEOVY, CHAFFE,
Attys. American Surety Co. of New York.

It Is Ordered, Adjudged And Decreed that the report of the Special Master herein, filed on the 17th day of April, 1933, is hereby confirmed and made the judgment of this Court, and that distribution of the fund

now on deposit in Court be made in accordance therewith after first deducting the costs of Court and the fee of the Special Master herein, which fee is hereby set at the sum of One Thousand Dollars.

(Signed) WAYNE G. BORAH,
Judge.

April 20, 1933.

PETITION OF ETIENNE DUGAS FILED IN CIVIL DISTRICT COURT, PARISH OF ORLEANS, IN CASE 206399.

33 Filed U. S. Dist. Court. Jan. 20, 1935.

Civil District Court, Parish of Orleans, State of Louisiana

No. 206-399 Division "D" Docket 4

Etienne Dugas,
vs.
New York Casualty Company.

..... Deputy Clerk.

Filed March 7, 1934.

To the Honorable, the Civil District Court in and for the Parish of Orleans, State of Louisiana:

The petition of Etienne Dugas of the full age of majority and a resident of New Iberia, Parish of Iberia, State of Louisiana, with respect, represents:

1.

That in the matter entitled "Etienne Dugas vs. American Surety Company of New York" bearing the

No. 188,642 of the Docket of this Court, your petitioner did, on the 14th day of April, 1931, obtain a judgment against the said American Surety Company of New York, a certified copy of which said judgment is hereto attached and made a part hereof.

2.

That on the 27th day of April, 1931, the said American Surety Company of New York appealed suspensively from the aforesaid judgment and completed said appeal by filing bond in the sum of Ten Thousand and no 100 ($10,000) Dollars with the New York Casualty Company, a corporation organized under the laws of the State of New York and duly authorized to do business in the State of Louisiana, and with a domicile and duly appointed agents in the City of New Orleans as surety thereon. And finally by filing in the Court of Appeal, Parish of Orleans, a full and complete transcript of this matter, within the time provided by law, a certified copy of which said bond is attached hereto and made part hereof.

3.

That on the 6th day of June, 1931, the principal on said appeal bond filed an interpleader in the United States District Court for the Eastern District of Louisiana, New Orleans, Division, entitled "American Surety Company of New York vs. Etienne Dugas, et als" and bearing the No. 20,782 in equity of the docket of said Court, citing more than one hundred claimants amongst whom was your petitioner herein, to make claim against the sum of Twenty Thousand ($20,000) Dollars deposited by the said American Surety Company of New York growing out of transactions with the Lumbermen's Reciprocal Association of Houston, Texas, a defunct insurance company for which the said

American Surety Company of New York was its qualifying bondsmen in the State of Louisiana;
34 that in these proceedings the said American Surety Company the principal on the bond of the defendant herein, applied for and obtained an injunction against your petitioner prohibiting him from proceeding against the said American Surety Company of New York. So that your petitioner was and is unable, without subjecting himself to contempt proceedings by the United States District Court, take any action to bring to a final determination the appeal which the said American Surety Company of New York took from the judgment of the Civil District Court herein above referred to.

4.

Petitioner charges that the bringing of the interpleader by the said American Surety Company of New York and the obtaining by them of said injunction prohibiting petitioner from proceeding further in said cause was and is an abandonment by the said American Surety Company of New York of its appeal in the said matter entitled "Etienne Dugas vs. American Surety Company of New York" and bearing the No. 13,886, of the docket of the Court of Appeal, Parish of Orleans, State of Louisiana.

5.

That as will be seen by a duly certified copy of the bond, filed by the said American Surety Company of New York and on which the defendant herein, the New York Casualty Company is the surety, the condition of said bond is that the principal shall prosecute its said suspensive appeal diligently and shall satisfy whatever judgment may be rendered against it, or that the same shall be satisfied by the proceeds of the sale of its estate, real or personal, if it be cast in the appeal; or

otherwise that the surety shall pay the judgment finally rendered by the Court of Appeal.

6.

That the said American Surety Company of New York, principal on said bond violated the condition thereof to the extent that not only did it fail to prosecute its said suspensive appeal diligently, it on the contrary, brought proceedings as aforestated before the United States District Court prohibiting your petitioner from proceeding or in any manner attempting to force a final determination of the cause by the Court of Appeal.

7.

Petitioner further alleges, that the interpleader proceedings hereinabove referred to have been completed and is now final; that your petitioner was decreed the sum of Four Thousand One Hundred Sixty and 68/100 ($4,160.68) Dollars, of which under the said
35 judgment, he received only 27.43 per centum or the sum of One Thousand One Hundred Forty-One and 29/100 ($1,141.29) Dollars, all as will be more fully shown by reference to a certified copy of an abstract of the Master's report and the judgment thereon hereto attached and made part hereof.

8.

That your petitioner did on the 1st day of July, 1931, notify the defendant herein of the fact that said American Surety Company had taken the proceedings hereinbefore stated in the United States District Court and on the 17th day of October, 1933, your petitioner made formal demand upon the defendant herein for the sum of Three Thousand Nineteen and 39/100 ($3,019.39)

Dollars calculated in accordance with an itemized statement which is hereto attached and made part hereof, and marked Exhibit 3 for identification herewith. Which said itemized bill is a true and correct statement of petitioner's claim against the defendant in this suit.

9.

That despite said amicable demand the said defendant refuses to make settlement.

Wherefore, petitioner prays that the said defendant, through its proper officer, be duly cited to appear herein and answer hereto, and that after due proceedings had, there be judgment in favor of your petitioner, Etienne Dugas, and against the said defendant, the New York Casualty Company in the full and true sum of Three Thousand Nineteen and 39/100 ($3,019.39) Dollars together with legal interest from October 9, 1930, until paid and for all costs of this suit.

And for all general and equitable relief, and such orders as the Court may deem necessary and proper in the premises.

(Sgd.) I. E. UZZO,
Attorney for Petitioner.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came and appeared, I. E. Uzzo, who after being duly sworn, deposes and says:

That he is the attorney for petitioner in the above and foregoing petition; that he has prepared same and that all of the allegations, therein contained are true

and correct, to the best of his knowledge, information and belief.

I. E. UZZO.

Sworn to and subscribed before me, this 5 day of March, 1934.

(Sgd.) JAMES J. LANDRY,
Notary Public.

A true copy.

(Sgd.) E. ???
Deputy Clerk Civil District Court, Parish of Orleans, State of La.

AMENDED AND SUPPLEMENTAL PETITION OF ETIENNE DUGAS FILED IN CASE 206399 IN CIVIL DISTRICT COURT FOR PARISH OF ORLEANS.

36 Filed in U. S. Dist. Court Jan. 29, 1935.

Civil District Court, Parish of Orleans, State of Louisiana.

No. 206-399 Division "D" Docket 4

Etienne Dugas,
vs.
New York Casualty Company.

..... Deputy Clerk.

Filed March 14, 1934.

To the Honorable, the Civil District Court in and for the Parish of Orleans, State of Louisiana.

The amended and supplemental petition of Etienne Dugas, with leave of Court being first obtained, a resi-

dent of Iberia Parish and of the full age of majority, with respect shows:

1.

That he adopts all of the allegations of his original petition as if reiterated herein in extenso.

2.

That he desires to remit any sum due him or claimed to be due him by the defendant herein, over the sum of Two Thousand Nine Hundred Ninety-Nine and no/100 ($2,999.00) Dollars, and he does hereby, for that purpose, amend the prayer of his original petition herein to give effect to such remittance.

Therefore, petitioner prays that he may be permitted to file this supplemental and amended petition; and that the said New York Casualty Company, through its proper officer, be duly cited to appear herein and answer hereto, and that after due proceedings had, there be judgment herein in favor of petitioner, Etienne Dugas, and against said defendant, New York Casualty Company, in the sum of Two Thousand Nine Hundred Ninety-Nine and no/100 ($2,999.00) Dollars, with legal interest from date of judical demand, until paid, and for all costs of this suit.

And for all general and equitable relief, and for such further orders as the Court may deem necessary and proper in the premises.

.....,
Attorney for Petitioner.

EXCEPTION OF NEW YORK CASUALTY CO., FILED IN 206399 CIVIL DISTRICT COURT PARISH OF ORLEANS.

37 Filed in U. S. District Court Jan. 29, 1933.

Civil District Court for the Parish of Orleans, State of Louisiana.

No. 206,399 Div. "D" Docket . .

Etienne Dugas vs. New York Casualty Company.

Now into Court comes New York Casualty Company, defendant herein, for the sole purpose of excepting to plaintiff's petition and reserving the right to answer, appear or otherwise plead, in the event the said exception should be overruled, and excepts to plaintiff's petition as follows:

I.

This suit is premature in that it is a suit against a surety company and the petition affirmatively shows that the necessary steps to enforce payment, against the principal, of the balance herein claimed have not been taken as required by Article 3066 of the Civil Code and Article 596 of the Code of Practice.

II.

In the alternative, and only in the event that the foregoing exception be overruled, then and in that event said petition is entirely too vague, uncertain and indefinite to permit exceptor safely to answer thereto, in specification whereof exceptor shows:

(a) That a copy of the petition in the suit of Etienne Dugas vs. American Surety Company of New York,

referred to in Article I of the present petition, as well as a copy of each supplemental petition filed in the said cause should be, but is not, filed herein.

(b) A copy of the petition of interpleader in the matter entitled "American Surety Company of New York vs. Etienne Dugas, Et. Als.," referred to in Article III of the present petition is not, but should be filed herein.

(c) Plaintiff does not state whether, in the said interpleader suit, there was any judgment or decree fixing or limiting the liability of the American Surety Company of New York to the various claim-
38 ants against the $20,000.00 bond therein involved, which was the same bond which is the basis of the suit of Etienne Dugas vs. American Surety Company of New York, first above referred to, and plaintiff should so state; and, if there was any such judgment or decree (and there was one dated September 19, 1932), plaintiff should file herein a copy thereof.

(d) Plaintiff should state, but does not, whether he filed any answer or claim in the said interpleader proceeding, and, if he filed one (as he did) he should attach a copy thereof as well as copies of any additional or supplemental pleadings which he may have filed therein.

(e) It does not appear definitely from the petition whether plaintiff is in fact basing his claim on the judgment of the Civil District Court for the Parish of Orleans in the suit of Dugas vs. American Surety Company of New York, referred to in Article I of the petition, which judgment has never become final, or on the findings of the Special Master in the suit of American Surety Company of New York vs. Etienne Dugas, Et. Als., in the United States District Court

for the Eastern District of Louisiana, referred to in Articles III and VII of the petition.

(f) Said petition is in various and divers other respects vague and indefinite.

III.

In the alternative, and only in the event that the foregoing exceptions be overruled, then and in that event that plaintiff, having acquiesced in the judgment of the United States District Court for the Eastern District of Louisiana in the matter of "American Surety Company of New York vs. Etienne Dugas, Et. Als.", which is referred to in Article VII of plaintiff's petition and a copy of this judgment is attached to plaintiff's petition, is estopped from making any further claim on account of the qualifying bond of $20,000.00 furnished by the American Surety Company of New York, as surety, for the Lumbermen's Reciprocal Association, as principal, and is therefore estopped from making any claim against exceptor under its appeal bond as surety for American Surety Company of New York, in a suit based on said qualifying bond of the American Surety Company of New York.

39 IV.

In the alternative, and only in the event that the foregoing exceptions be overruled, then and in that event that the said petition discloses no right or cause of action against your exceptor.

Wherefore, exceptor prays that there may be judgment in its favor maintaining this exception and finally dismissing plaintiff's suit, and for costs and such other and further relief as may be necessary or proper in the premises.

DENEGRE, LEOVY & CHAFFE,
Attorneys for New York Casualty Company.

I certify that I am one of the attorneys for exceptor herein; that I have read the foregoing exception and that same is filed in good faith and not merely for purposes of delay.

40 JUDGMENT.

Etienne Dugas,
vs. No. 206,399.
New York Casualty Co.

Civil District Court Division "D". Docket 4.

On exception of prematurity.

Present: L. E. Uzzo, and Jas. J. Landry, Attorneys for Plaintiff,

Harry J. McCall, Attorney for Exceptor.

When after hearing pleadings and argument of Counsel, the Court being of the opinion that said exception was well founded, for the reasons orally assigned.

It Is Ordered By The Court, that said exception of Prematurity be maintained, and accordingly plaintiff in suit is hereby dismissed, with all rights reserved, at his costs.

Judgment rendered read and signed in open Court on April 20th, 1934.

(Sgd.) WALTER L. GLEASON,
Judge.

PETITION FOR REMOVAL OF CASE FROM CIVIL DISTRICT COURT PARISH OF ORLEANS TO U. S. DISTRICT COURT EASTERN DISTRICT OF LA.

41 Filed Jan. 29, 1935.

Civil District Court for the Parish of Orleans, State of Louisiana.

No. 206,399 Div. ". ." Docket . .

Etienne Dugas vs. New York Casualty Company.

Filed March 15, 1934.

. . . . . Dy. Clerk.

Petition for Removal.

To the Honorable, the Civil District Court for the Parish of Orleans, State of Louisiana:

Now comes New York Casualty Company, defendant herein, and files this its petition for removal of this cause from the aforesaid Civil District Court for the Parish of Orleans, State of Louisiana, in which it is now pending, to the District Court of the United States in and for the New Orleans Division of the Eastern District of Louisiana, held in the City of New Orleans in said District and State.

I.

Petitioner shows that this cause was filed in this Honorable Court on March 7, 1934 and that the time to plead, answer or except to the same has not expired under the laws of the State of Louisiana in such case made and provided.

II.

That the suit is one of a civil nature at law, over which the District Courts of the United States have original jurisdiction, the said suit having been brought by the plaintiff against the defendant by reason of the execution by defendant, petitioner herein, of a certain appeal bond, or undertaking, in a proceeding entitled "Etienne Dugas vs. American Surety Company of New York", originally No. 188,642 of the docket of this Honorable Court, and now No. 13,886 of the docket of the Court of Appeal for the Parish of Orleans, State of Louisiana, it being claimed by plaintiff that
42 by reason of the filing by American Surety Company of New York (the principal on the appeal bond executed by New York Casualty Company as surety) of a certain interpleader suit in the United States District Court for the Eastern District of Louisiana, New Orleans Division, the said American Surety Company of New York abandoned the appeal in connection with which the said appeal bond was given, and, accordingly, that plaintiff, on account of a judgment of this Court in whose favor said appeal was taken, may proceed against defendant, your present petitioner, as surety on the said appeal bond, the amount claimed in the present suit being in the principal sum of Three Thousand Nineteen and 39/100 ($3019.39) Dollars, as will appear from plaintiff's petition herein.

III.

The matter in dispute exceeds the sum of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs, the suit being for the sum of Three Thousand Nineteen and 39/100 ($3,019.39) Dollars, as will more fully appear by plaintiff's petition on file herein, which is here referred to and made a part hereof.

IV.

At the time of the commencement of this suit, and since that time, plaintiff, Etienne Dugas, was and now is a citizen and resident of the State of Louisiana and of the Parish of Iberia in said State, and the defendant, your petitioner, was and still is a corporation chartered and existing under and by virtue of the laws of the State of New York and a citizen and resident of said state, having its office and principal place of business in the City of New York in said State, and is not, now, and was not at the time of the institution of the above suit, nor at any time, a citizen or resident of the State of Louisiana, and that there are no other parties to this suit. Defendant, your petitioner herein, files herewith a bond with good and sufficient surety for its entering in the District Court of the United States for the New Orleans Division of the Eastern District of Louisiana, within thirty (30) days from the date of the filing of this petition, a certified copy of the record in said District Court and for paying all costs that may be awarded by said Dis-
43 trict Court of the United States if said Court shall hold that such suit was wrongfully or improperly removed thereto, as provided by the statutes of the United States.

Prior to the filing of this petition and of said bond for the removal of this cause, written notice of intention to file the same was given by petitioner to the plaintiff as required by law, as will more fully appear from copy of said notice and proof of service attached thereto.

Your petitioner, therefore, prays the Court that it proceed no further herein, except to order the removal, accept the bond herewith prepared, and direct a trans-

cript of the record to be made and certified, as provided by law.

DENEGRE, LEOVY &
CHAFFE,
Attorneys for New York
Casualty Company.
HARRY McCALL,
Trial Attorney.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came and appeared Harry McCall, who, being first duly sworn, deposes and says:

That he is a member of the law firm of Denegre, Leovy & Chaffe, attorneys for New York Casualty Company, defendant and petitioner herein; that he has read the foregoing petition, and that the facts and allegations therein contained are true and correct.

HARRY McCALL.

Sworn to and subscribed before me at New Orleans, Louisiana, this 13th day of March, 1934.

JOHN L. TOBIN,
Notary Public.

March 15/34, Denied because Supplemented Petition.

MICHEL PROVOSTY, J.

44 Civil District Court for the Parish of Orleans,
State of Louisiana.

No. 206,399 Div. ".." Docket ..

Etienne Dugas vs. New York Casualty Company.

Know All Men By These Presents That we, New York Casualty Company, as principal and Fidelity and

Deposit Company of Maryland, as surety, are held and firmly bound unto Etienne Dugas, the plaintiff in the above entitled cause, his successors and assigns in the penal sum of Five Hundred ($500.00) Dollars, lawful money of the United States of America, for the payment of which well and truly to be made, we, and each of us, bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

The conditions of this obligation are that whereas the said New York Casualty Company has applied, by petition to the Civil District Court for the Parish of Orleans, State of Louisiana, for the removal of the above entitled cause from the said Civil District Court to the District Court of the United States for the Eastern District of Louisiana, New Orleans Division;

Now if the said New York Casualty Company shall enter in the said District Court of the United States for the said Eastern District of Louisiana, New Orleans Division within Thirty (30) days from the date of filing of the petition for such removal, a certified copy of the record in said suit, and shall well and truly pay all the costs that may be awarded by said District Court, if it shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void, otherwise to remain in full force and effect.

NEW YORK CASUALTY COMPANY,
(As Principal)
(Sgd.) By L. P. McGEE,
(Manager).

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
(As Surety)
(Sgd.) By ARNOLD S. KIRCHOFF,
Attorney in fact.

New Orleans, Louisiana, March 13, 1934.

45 Civil District Court for the Parish of Orleans, State of Louisiana.

No. 206,399 Div. ". ." Docket . .

Etienne Dugas vs. New York Casualty Company.

To Ignatius E. Uzzo, Esquire, Attorney for Etienne Dugas, plaintiff herein:

Please take notice that New York Casualty Company, the defendant in the above entitled cause, will, on the 15th day of March, 1934, at 10:25 o'clock in the forenoon of that day, file in the Civil District Court for the Parish of Orleans, State of Louisiana, and in the Clerk's office thereof, in which said suit is now pending, its petition and bond for the removal of the said cause from the said Court to the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, and that, on the 15th day of March, 1934, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, said petition and bond will be called up for hearing and disposition before the above Court, in which this action is pending, at which time and place you may be present, if you so elect. A copy of said petition and a copy of said bond are served herewith.

New Orleans, Louisiana, March 13, 1934.

Yours very truly,
DENEGRE, LEOVY & CHAFFE,
Attorneys for defendant, New York Casualty Company, petitioner herein.

724 Whitney Building, New Orleans, La.

OPINION OF SUPREME COURT OF STATE OF LOUISIANA, IN CASE OF ETIENNE DUGAS IN CIVIL DISTRICT COURT PARISH OF ORLEANS.

46 Filed in U. S. Dist. Court Jan. 29, 1935.

Monday Jan. 7, 1935.

Supreme Court of Louisiana

Etienne Dugas,
v. No. 32,960.
New York Casualty Company.

Appeal from the Civil District Court, for the Parish of Orleans.—Walter L. Gleason, Judge.

O'NIELL, C. J.

Etienne Dugas has appealed from a judgment dismissing his suit on a plea of prematurity. In considering the appeal, we assume that the facts stated in the petition are true. Dugas had a claim for workmen's compensation insurance against the Lumbermen's Reciprocal Association, a Texas corporation doing business in Louisiana, which went into the hands of a receiver. The corporation had furnished a bond for $20,000, as required of foreign insurance companies, by Act 172 of 1908, p. 232, for the privilege of doing business in Louisiana. The American Surety Company of New York was surety on the $20,000 bond. Dugas, therefore, sued the American Surety Company, in the Civil District Court in New Orleans, and obtained a judgment against the company for $20 per week during his disability, not to exceed 300 weeks, commencing on the 15th of May, 1930, and for $250 for medical bills. In the same judgment the American Surety Company obtained a judgment against the Lumber-

men's Reciprocal Association and its receiver for reimbursement of the same amount and to the same extent that Dugas obtained judgment against
47 the American Surety Company. The judgment was signed on the 20th of April, 1931. The American Surety Company promptly took a suspensive appeal from the judgment, to the Court of Appeal for the Parish of Orleans, and filed an appeal bond for $10,000, signed by the New York Casualty Company as surety. The record was filed promptly in the Court of appeal, and thereafter, on the 6th of June, 1931, the American Surety Company of New York filed in the United States District Court for the Eastern District of Louisiana an interpleader suit, entitled American Surety Company of New York v. Etienne Dugas et al., and deposited $20,000, and cited Dugas and many other defendants having claims against the American Surety Company of New York, by virtue of the qualifying bond of $20,000 which the Company had signed as surety for the Lumbermen's Reciprocal Association. The American Surety Company asked for and obtained from the United States District Court a decree declaring that the company had discharged in full its obligation under the qualifying bond of $20,000, and enjoining Dugas and the other defendants from taking any further proceedings against the American Surety Company under the bond of $20,000. In the judgment of the United States District Court affirming the report of the special Master, in the interpleader suit, Dugas was allowed $20 per week for 127 weeks, that is, from the 15th of May, 1930, to the date of the first hearing before the master, and was allowed $8 per week (for 40 per cent disability) for the remaining 173 weeks being $1,273.28 (discounted at 8%), plus the $250 for medical fees, and $97.50 Court costs, making a total allowance of $4,160.68. In the distribution of the $20,000 deposited by the American Surety Company, among the defendants in the interpleader suit in the United States Dis-

trict Court, Dugas received, as his pro rata share, $1,-141.29, leaving unpaid $3,019.39 of the indebtedness which was fixed and recognized by the decree affirming the master's report. Thereafter, Dugas made demand for the $3,019.39 upon the New York Casualty Company, as surety on the appeal bond of $10,000, which was given by the American Surety
49 Company to appeal from the judgment of the Civil District Court to the Court of Appeal for the Parish of Orleans. The New York Casualty Company denied liability, and Dugas brought this suit against the company for the $3,019.39. To avoid a removal of the suit to the United States District Court, Dugas filed a supplemental petition reducing his demand to $2,999.

The New York Casualty Company, the only defendant in the present suit, filed, alternatively, but in one document, first, the plea of prematurity, second, an exception of vagueness, third, a plea of estoppel by acquiescence on the part of Dugas in the decree of the United States District Court, and, fourth, an exception of no cause or right of action. The judge sustained the plea of prematurity, without passing upon the other pleas.

The plea of prematurity is founded upon the provisions of article 3066 of the Civil Code and article 596 of the Code of Practice, to the effect that no suit shall be instituted against a surety on an appeal bond until the necessary proceedings have been taken against the principal to compel payment of the judgment. It is conceded by counsel for the New York Casualty Company that the reason why Dugas does not proceed further to enforce against the American Surety Company the judgment which he obtained against the company in the Civil District Court is that he cannot proceed further with the prosecution of the suit in which the judgment was rendered, without violating the injunc-

tion which was granted by the United States District Court. And, as the injunction has been made perpetual by the decree of the United States District Court, it is conceded that, if the plea of prematurity is well founded, so also is the exception of no right of action well founded. In other words, if Dugas is not permitted to sue the New York Casualty Company as surety on the $10,000 appeal bond until he has prosecuted further his suit against the American Surety Company, in the Court of Appeal for the Parish of Orleans, he will never be permitted to sue
49 the New York Casualty Company as surety on the $10,000 appeal bond.

The conditions of the appeal bond on which this suit is founded are precisely in accord with the terms prescribed in article 579 of the Code of Practice, viz: "That it is given as surety that the appellant shall prosecute his appeal, and that he shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in his appeal, otherwise that the surety shall be liable in his place". The first obligation on the part of an appellant, in order to save the surety from liability on the appeal bond, is "that the appellant shall prosecute his appeal". If he prosecutes his appeal, he must also "satisfy whatever judgment may be rendered against him, * * * otherwise the surety shall be liable in his place". But the appellant may render the surety liable as well by abandoning his appeal, as by prosecuting the appeal and then failing to satisfy whatever judgment may be rendered against him. It was so decided in Champonier v. Washington, 2 La. Ann. 1013. In that case the appeal was declared abandoned by the failure of the appellant to file the transcript before the expiration of the return day. See Champonier v. Washington, 2 La. Ann. 722. The plaintiff then proceeded against the surety on the appeal bond, and he pleaded that the

plaintiff had no right to proceed against him "because the judgment against Washington, from which the appeal was taken, was not affirmed by this [the Supreme] Court". The Court held that, as the appellant had not prosecuted his appeal, but had abandoned it, the obligation for which the surety was liable on the appeal bond was to pay the judgment appealed from. In so deciding the Court said:

"Where an appellant abandons his appeal, the surety on the appeal bond cannot exempt himself from responsibility on the ground that 'the judgment
50 appealed from has not been affirmed', as contemplated by sec. 20 of the stat. of 20 March, 1839, and arts. 575, 596, of the Code of Practice. Per curiam: The condition of the appeal bond, following literally the requisition of art. 579 of the Code of Practice, was 'that the appellant shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him', &c. The appellant did not prosecute his appeal, and the condition of the bond was thus broken."

That decision was cited with approval in Moore, Janny & Hyams v. Lalaurie, 27 La. Ann. 1013, and in Rowle v. Feltus, 33 La. Ann. 422, and in Russ & Hollingsworth v. Their Creditors, 45 La. Ann. 422, 12 So. 627; in which cases it was held that an appeal bond which did not contain the obligation or condition that the appellant should prosecute his appeal was not a valid appeal bond. To the same effect see the editorial note to Woodle v. Settlemeyer, L. R. A. 1915 A, p. 845, III, and Ann. Cas. 1916 C, p. 1228.

The American Surety Company in this instance, abandoned the appeal which the company had taken from the judgment of the Civil District Court to the Court of Appeal for the Parish of Orleans, when the

Company went into the United States District Court and enjoined Dugas from prosecuting his suit, then pending in the Court of Appeal. It is argued by counsel for the New York Casualty Company that the American Surety Company did not abandon its appeal, but, on the contrary, satisfied the judgment appealed from, by depositing in the United States District Court the amount of the $20,000 bond on which the suit was founded. That would be true, perhaps, if the judgment which Dugas had obtained against the American Surety Company had been limited in its terms so that he could collect only a proportionate share of the amount of the $20,000 bond on which the suit was brought. But the judgment which Dugas held against the American Surety Company was unqualified in that respect, and was exigible against any property belonging to the company. The judgment was a final judgment, not subject to annulment or amendment except by the Court having appellate jurisdiction. Code of Prac. Art. 539,565. And the execution or collection of the judgment was prevented only by the suspensive appeal, and on the condition that the appellant, American Surety Company, should prosecute the appeal, and should satisfy whatever judgment might have been rendered against the company, or that the surety on the appeal bond, the New York Casualty Company, should be liable in its place The expression in the article of the code, "that the surety shall be liable in his place", means that the surety shall be liable for whatever judgment the principal on the bond shall be liable for; that is, the judgment of the appellate Court if the appellant prosecutes his appeal, or the judgment appealed from if the appellant abandons the appeal. Any other interpretation would render a suspensive appeal bond worthless in the case of an abandonment of an appeal from a money judgment. And any other interpretation would contradict the very language of the bond, "that the appellant shall prosecute his appeal".

51

It is impossible to reconcile, in principle, the judgment appealed from in this case with the rulings which were made in American Surety Company of New York v. Brim et al., 175 La. 959, 144 So. 727, and American Surety Company of New York v. Brim et al., In re: Lyon Lumber Co., etc., 176 La. 867, 147 So. 18. In the first of these cases Mrs. Brim, and in the second the Lyon Lumber Company, had a claim against the Home Accident Insurance Company, for workmen's compensation insurance; and the company, being a foregin corporation, became insolvent and went into the hands of a receiver. Mrs. Brim and the Lyon Lumber Company, each, obtained a judgment against the American Surety Company of New York, as surety on the qualifying bond of the Home Accident Insurance Company; and in each case the American Surety Company took a suspensive appeal to this Court; and in each case the judgment appealed from was affirmed. After the judgment of this Court in Mrs. Brim's case had become final by the refusal of a rehearing, but before the judgment in the Lyon Lumber Company's case had become final by the lapse of the time allowed for an application for a rehearing, the American Surety Company filed an interpleader suit in the Civil District Court, under the provisions of Act 123 of 1922, against Mrs. Brim and the Lyon Lumber Company and all others having claims against the Home Accident Insurance Company; and, depositing the amount of the qualifying bond into the registry of the Court, the

52

American Surety Company obtained an injunction against all of the defendants in the interpleader suit, forbidding them to proceed further against the American Surety Company as surety on the Home Accident Insurance Company's qualifying bond. In the Lyon Lumber Company's case, as well as in Mrs. Brim's case, we held that it was too late for the American Surety Company to restrict the right of recovery by way of an injunction in an interpleader suit. In deciding the Lyon Lumber Company's case we said:

"The only difference between Bertha Brim's case and the Lyon Lumber Co. Case, which we are now considering, is that, at the time plaintiff made its deposit in the Court below, Mrs. Brim's judgment had become final in this Court; whereas, at the time the deposit was made, the Lyon Lumber Company judgment had not yet become final, but only became so afterwards.

"That, however, made no difference. There had been a judgment against the American Surety Company in the Court below, though the *execution* of that judgment had been suspended by an appeal. But the condition on which the law allowed the American Surety Company to suspend that judgment was that it should pay the judgment if affirmed on appeal, and furnish a good and solvent surety who would do so in its stead.

"As an appeal is not necessary to due process of law, a state may annex any condition it pleases to the granting of an appeal; and manifestly, if the law requires [that] a surety be furnished to guarantee the payment of the judgment if affirmed, it is not intended as a mere idle formality. Therefore the proceedings in the Court below should not and could not prevent the Lyon Lumber Company from proceeding to fix the liability of the surety to enable it to collect from that surety if for any reason the American Surety Company could not be made to pay."

The only difference between the Lyon Lumber Company's case and Dugas' case is that in the
53 Lyon Lumber Company's case, the Court that granted the injunction in the interpleader suit was one over which this Court had appellate and supervisory jurisdiction; whereas, in Dugas' case, the Court that granted the injunction in the interpleader suit is one over which this Court has no jurisdiction. Because of that difference between the two cases, it is said by counsel for the New York Casualty Company that the

decree of the United States District Court, forever enjoining Dugas from proceeding further against the American Surety Company for the collection of his judgment, must be obeyed. That is true; but the decree is only in favor of the American Surety Company, not in favor of the New York Casualty Company. The United States District Court did not, in its decree, undertake to destroy or limit Dugas' right of action against the New York Casualty Company, as surety on the appeal bond which was given to suspend the execution and to secure the payment of the judgment rendered by the District Court for the Parish of Orleans, from which an appeal was taken to the Court of Appeal for the Parish of Orleans. We must bear in mind that this suit is not founded upon the qualifying bond for $20,000, which the American Surety Company signed as surety for the Lumbermen's Reciprocal Association, but is founded upon the suspensive appeal bond for $10,000, which the New York Casualty Company signed as surety for the American Surety Company. The $20,000 qualifying bond passed out of the case when the American Surety Company abandoned its appeal in the suit on that bond and thereby rendered the New York Casualty Company liable as surety on the $10,000 appeal bond.

Counsel for the New York Casualty Company cite, in support of the judgment appealed from, certain expressions used by this Court in deciding the Lyon Lumber Company's case, viz:

"The effect of this [interpleader] proceeding and
of the injunction issued therein by the Court
54 below was that neither Bertha Brim not the
Lyon Lumber Company could collect their judgements either from the American Surety Company or from the surety on the appeal bonds. For, if the sheriff could make no attempt to collect from the principal on the appeal bond because he was enjoined from

doing so, it followed that the surety on the bond could never be made to pay (Code Prac. arts. 579, 596); and the appeal bond would thus become a mere scrap of paper."

That was said in condemnation of the interpleader proceeding and to show the injustice of it as far as Mrs. Brim and the Lyon Lumber Company were concerned. The Court did not have any occasion to decide in that case and did not decide what effect the interpleader proceeding would have upon the liability of the surety on the appeal bonds, if the interpleader proceedings should be allowed to proceed to a final judgment against Mrs. Brim and the Lyon Lumber Company and in favor of the principal on the appeal bonds.

It is argued by counsel for the New York Casualty Company that, if Dugas is allowed to proceed against the company as surety on the $10,000 appeal bond, the effect will be the same as to allow Dugas to proceed against the American Surety Company as principal on the bond, because, if the New York Casualty Company is held liable as surety on the appeal bond, the company will have recourse against the American Surety Company as principal on the bond. Whether the New York Casualty Company will be barred, in that event from proceeding against the American Surety Company, by the injunction that was granted by the United States District Court in the interpleader suit, is a question with which Dugas is not concerned. He did not institute the interpleader suit. It is true that, if the New York Casualty Company has to pay Dugas and if the American Surety Company has to reimburse the New York Casualty Company, the American Surety Company will have paid out more than the amount of the $20,000 qualifying bond. But that happened in
Mrs. Brim's case and in the Lyon Lumber
55 Company's case, as a consequence of the failure of the American Surety Company to pro-

voke an interpleader suit until the plaintiff in each of those cases had obtained a final judgment against the American Surety Company; and by the same token it may happen in this case.

Decree.

The judgment appealed from is annulled, the plea of prematurity is overruled, and the case is ordered remanded to the Civil District Court for further proceedings consistent with the opinion which we have rendered. The costs of this proceeding, on the plea of prematurity, are to be borne by the appellee; the question of liability for other Court costs is to abide the final disposition of the case.

Rehearing refused Febry. 4, 1935.

A true copy:

Clerk's Office, New Orleans, May 21st, 1935.
(Seal) PERCY J. HEINES,
Deputy Clerk Supreme Court
of Louisiana.

APPLICATION OF N. Y. CASUALTY CO. FOR REHEARING.

56 Filed in Supreme Court of Louisiana in case No. 32,960.

Etienne Dugas;
v. No. 32,960.
New York Casualty Company.

Supreme Court of Louisiana.

The petition of New York Casualty Company, defendant and appellee, respectfully shows:

That the opinion and decree rendered in this cause on the 7th. day of January, 1935, is erroneous and

contrary to the law and the evidence and prejudicial to the interest of petitioner, and that a rehearing should be granted in this matter for the following reasons, to-wit:

(1) The Court is in error in its statement as to what the facts were, or what was held, in the case of *Champomier v. Washington 2 La. An. 1013*, which is the foundation of the entire opinion.

(2) The Court is in error in holding that a suit will lie against a surety on an appeal bond unless and until the steps provided by *Article 3066* of the *Civil Code and Article 596 of the Code of Practice* are taken.

(3) The Court is in error in holding that a surety on an appeal bond can be made liable on the said bond when there is no claim against the principal on such bond.

(4) The Court is in error in holding that in view of the decree of the Federal Court fully discharging the principal on the said appeal bond from any further liability to plaintiff, any action can be brought against the surety on the said bond.

(5) The Court is in error in holding that the liability of a surety on an appeal bond can be greater than that of the principal.

Petitioner further shows that it will file, in connection with this petition, briefs in support thereof, and that for the reasons hereinabove set forth and
57 amplified in the briefs, a rehearing should be granted, and, finally, judgment of the District Court should be affirmed.

The premises considered, petitioner prays that, after due consideration, a rehearing be granted in this case,

and that finally, the judgment of the District Court be affirmed, and for all general and equitable relief.

(Signed) DENEGRE, LEOVY & CHAFFE,
Attorneys for New York Casualty Company.

(Signed) HARRY McCALL,
Trial Attorney.

New Orleans, January 19, 1935.

PETITION OF AMERICAN SURETY COMPANY OF N. Y., AND ORDER FOR DEFENDANT TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE.

58 Filed Jan. 29, 1935.

(Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

The supplemental petition of American Surety Company of New York, plaintiff herein, respectfully shows:

I.

As to Etienne Dugas, one of the defendants herein, it was alleged in Article V of the original petition herein:

"There are two suits pending against petitioner under its said bond of February 12, 1930. One of these suits is entitled Etienne Dugas vs. American Surety Company of New York, No. 188,642 of the Docket of the Civil District Court for the Parish of Orleans,

State of Louisiana, and in it a judgment was on April 14th, 1931, entered in favor of the plaintiff therein against the defendant therein (the plaintiff herein) requiring the payment of $20.00 a week for a period not to exceed three hundred weeks, as will more fully appear from copy of the said judgment hereto attached as part hereof and marked, Surety 2. The said judgment being duly signed the defendant, your plaintiff, obtained an order of appeal to the Court of Appeal for the Parish of Orleans, in which Court the matter is not set down for argument on June 9, 1931."

II.

In the answer herein filed by the said Dugas this allegation was specifically admitted.

III.

By decree herein entered on September 19, 1932, plaintiff was adjudged to have complied with all of its obligations under or on account of the bond dated February 12, 1930, executed by it as surety and by the Lumbermen's Reciprocal Association as principal, said bond being in the penal sum of Twenty Thousand Dollars ($20,000.00) and being given under Act 172 of the General Assembly of the State of Louisiana, passed at the Regular Session of 1908, or on account of any similar previous bonds, and plaintiff was released and discharged from any and all further liability on account of said bonds or any of them and the said decree further provided:

59 "That all defendants hereby be and they hereby are perpetually restrained and enjoined from instituting or prosecuting in any state Court, or in any other Federal Court, any suit against said American Surety Company of New York on account

of any right or claim growing out of said bond, or any similar previous bond."

IV.

After the entry of the decree of September 19, 1932, the Special Master appointed by the said decree held hearings and filed a report on April 17, 1933, in which he proposed that the sum of One Thousand One Hundred Forty-one and 29/100 Dollars ($1,141.29) be paid to the said Dugas as his pro rata share in the amount deposited in Court by plaintiff.

V.

Under stipulation entered into by and between all of the defendants, through their respective counsel, including Dugas, acquiescing in the said report of the Special Master and waiving the delay for the filing of exceptions thereto, this Court, on April 20, 1933, confirmed the said report and ordered distribution made in accordance therewith.

VI.

There was promptly paid to the said Dugas the pro rata share allowed him by the said report.

VII.

In the said suit brought by Dugas against the plaintiff herein, (American Surety Company of New York No. 188,642 of the docket of the Civil District Court for the Parish of Orleans), the situation still is as set forth in Article V of the original petition herein, to-wit, that a judgment had been entered by the said Civil District Court on April 14, 1931, in favor of the plaintiff therein and against the defendant therein, requiring

the payment of Twenty Dollars ($20.00) a week for a period not to exceed three hundred (300) weeks, from which judgment an appeal was taken to the Court of Appeal for the Parish of Orleans, where the transcript had been lodged prior to the filing of the interpleader suit herein.

VIII.

On March 7, 1934, the said Etienne Dugas filed in the Civil District Court for the Parish of Orleans under the number 206,399 of the docket of the said Court, a suit against the New York Casualty Company, in the sum of Three Thousand Nineteen and
60 39/100 Dollars ($3,019.39) as will more fully appear from the petition in the said suit, copy of which is hereto attached as part hereof, marked "Surety A".

IX.

On March 14, 1934, the said Dugas filed an amended and supplemental petition reducing the amount claimed by him in the said suit to Two Thousand Nine Hundred Ninety-nine Dollars ($2,999.00) as will more fully appear from copy of the said supplemental and amended petition hereto attached as part hereof, marked "Surety B".

X.

The purpose of the reduction of the claim embodied in the said supplemental and amended petition was to avoid a removal of the suit to this Court.

XI.

New York Casualty Company, the defendant in the said suit, promptly filed exceptions to plaintiff's petition, copy of the said exceptions being attached hereto as part hereof, marked "Surety C".

XII.

Said exceptions were heard before the Civil District Court for the Parish of Orleans, which, on April 20, 1934, maintained the exception of prematurity first urged and dismissed plaintiff's suit reserving the rights under the other exceptions, which were urged in the alternative.

XIII.

Thereupon, the said Dugas appealed to the Supreme Court of the State of Louisiana where the cause was heard in due course and that Court, on January 7, 1935, annulled the judgment appealed from, overruled the plea of prematurity and remanded the case for further proceedings consistent with the opinion handed down by the said Court in said case. A copy of the opinion and decree of the said Supreme Court is attached hereto as part hereof, marked "Surety D".

XIV.

New York Casualty Company, the defendant in the said cause, has applied to the Supreme Court of Louisiana for a rehearing, which application has not yet been acted on by that Court.

61.

XV.

As will appear from the documents hereto attached and from the record of this Court in this case, the bond of the New York Casualty Company, on which suit was brought in the Civil District Court for the Parish of Orleans against the said New York Casualty Company, was an appeal bond executed by the American Surety Company of New York as principal and the New York Casualty Company as surety in connec-

tion with the appeal taken by the American Surety Company from the judgment against it and in favor of Etienne Dugas, referred to in Article V of the original petition herein, and the said judgment was based solely and entirely on the Twenty Thousand Dollar ($20,000.00) bond dated February 12, 1930, executed by American Surety Company of New York as surety and by the Lumbermen's Reciprocal Association as principal, specifically described in the decree of this Court dated September 19, 1932, hereinabove mentioned.

XVI.

Suit of the said Dugas against the New York Casualty Company is therefore an attempt to collect under the judgment obtained by Dugas against American Surety Company of New York in the Civil District Court for the Parish of Orleans, as to which said judgment said American Surety Company was, by the decree of this Court of September 19, 1932 in the present cause, released and discharged from any and all further liability.

XVII.

Furthermore, in view of the said decree of September 19, 1932, perpetually restraining and enjoining all defendants, including the said Dugas, from instituting or prosecuting in any State Court, or in any other Federal Court, any suit against said American Surety Company of New York on account of any right or claim growing out of the Twenty Thousand Dollar ($20,000.00) bond referred to, or any similar previous bond, it is apparent that the suit in the State Court against the New York Casualty Company is an attempt indirectly to do the very thing forbidden by the said decree of this Court, for if Dugas should succeed in collecting from the New York Casualty Company,

the American Surety Company of New York would have to reimburse the New York Casualty Company as the surety on its appeal bond for any amount
62 paid out by New York Casualty Company to the said Dugas, or expended by the New York Casualty Company in the way of fees or expenses in connection with the said suit.

XVIII.

American Surety Company of New York has no adequate remedy at law and is therefore entitled to the injunctive protection of this Court against the said Dugas in aid of the former decree of this Court against the said Dugas.

XIX.

Unless Dugas is restrained and enjoined from proceeding with his suit against the New York Casualty Company, plaintiff herein will be seriously and irreparably injured.

XX.

Maurice J. Hartson, a resident of this Parish and State, was and is Civil Sheriff of the Parish of Orleans, State of Louisiana, and as such is the official charged with the duty of executing the decrees and orders of the Civil District Court for the said Parish, and for that reason plaintiff desires that he be made a party hereto in order fully to guarantee the effectiveness of the relief herein sought.

Wherefore, as plaintiff is without adequate remedy at law for its protection in this matter, plaintiff respectfully prays:

(1) That it may have leave to file this supplemental petition.

(2) That proper process issue and be served upon Etienne Dugas, the defendant hereinabove named, and upon Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, requiring said defendant and said Civil Sheriff to appear and answer this supplemental petition within the time allowed by law, but not under oath, answer under oath being expressly waived.

(3) That an order to show cause issue herein directed to the said Etienne Dugas and to the said Civil Sheriff requiring said Etienne Dugas to appear and show cause why a preliminary injunction should not issue as herein prayed for, enjoining and restraining said Dugas, his attorneys, agents and representatives, from taking any steps to institute, prosecute or execute any judgment in, any suit or proceeding (and in particular the proceeding entitled Etienne Dugas v. New York Casualty Company, No. 206,399 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana) in any State Court or in any other Federal Court, on any claim growing out of or connected with the appeal bond executed by New York Casualty Company as surety and American Surety Company of New York as principal, in the sum of Ten Thousand Dollars ($10,000.00) and filed in connection with the appeal taken by American Surety Company of New York from judgment dated April 14, 1931, in suit entitled Etienne Dugas v. American Surety Company of New York, No. 188,642 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana; and requiring said Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, State of Louisiana to appear and show cause why a preliminary injunction should not issue against him, enjoining and restraining him, his successors in office, agents, servants, employees

63

and representatives from executing or taking any action to execute any judgment, decree, or order which may be issued against New York Casualty Company in suit of Etienne Dugas against said New York Casualty Company, which is hereinabove mentioned. That notice of this application for a preliminary injunction issue and be served upon the said Dugas, both individually and through his counsel, and upon Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, State of Louisiana, giving said defendant and said Civil Sheriff not less than .... days' notice of the hearing to be had.

(4) That upon final hearing of this cause, the said preliminary injunction may be made permanent, enjoining and restraining said Etienne Dugas, defendant herein, his attorneys, agents, servants, employees and representatives and any and all other persons or parties acting under his suggestion, direction, control or authority from taking any steps to institute, prosecute or execute any judgment in, any suit or proceeding (and in particular the proceeding entitled Etienne Dugas v. New York Casualty Company, No. 206,399 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana) in any State Court or in any other Federal Court, on any claim growing out of or connected with the appeal bond executed by New York Casualty Company as surety and American Surety Company of New York as principal, in the sum of Ten Thousand Dollars ($10,000.00) and filed in connection with the appeal taken by American Surety Company of New York from judgment dated April 14, 1931, in suit entitled Etienne Dugas v. American Surety Company of New York, No. 188,642 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana; and enjoining and restraining Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, State of Louisiana, his successors in office, agents, servants, employees and representatives

and any and all other persons or parties acting under his suggestion, direction, control or authority from executing or taking any action to execute any judgment, decree or order which may be issued against New York Casualty Company in suit of Etienne Dugas against said New York Casualty Company, which is hereinabove mentioned.

(5) That upon final hearing of this cause said Etienne Dugas be ordered and directed to dismiss his suit against American Surety Company of New York, No. 188,642 of the docket of the Civil District Court for the Parish of Orleans, and to take any and all proper action to evidence the said dismissal by the filing of appropriate motion in the Court of Appeal for the Parish of Orleans and/or in the Civil District Court for the Parish of Orleans and/or of satisfying the docket in the said cause; and, at the same time, releasing and relinquishing any claim or pretended claim against the appeal bond filed in the said cause by the New York Casualty Company as surety, all as this Court may direct, and

(6) For all costs of this proceeding and for such other and further relief as may be equitable and proper in the premises.

(Sig.) DENEGRE, LEOVY & CHAFFE,
Attorneys for American Surety Company of New York.

(Sig.) HARRY McCALL,
Trial Attorney.

64 State of Louisiana,
Parish of Orleans.

Before Me, the undersigned authority, personally came and appeared Harry McCall, who, being first duly sworn, deposes and says:

That he is one of the attorneys for American Surety Company of New York, petitioner herein; that he has

read the foregoing petition and the facts and allegations therein contained are true and correct.

Affiant further deposes and says that, as a member of the law firm of Denegre, Leovy & Chaffe, he personally handled the original proceedings herein on behalf of American Surety Company of New York, petitioner herein; and that, on behalf of New York Casualty Company, he handled and is handling the suit brought by Etienne Dugas in the Civil District Court for the Parish of Orleans, described in Article VIII and in subsequent articles of the petition herein; and that he is personally and entirely familiar with all of the phases of the litigation referred to in the previous petition.

(Sig.) HARRY McCALL.

Sworn to and subscribed before me at New Orleans, Louisiana, this 29 day of January, 1935.

(Sig.) C. D. SHAW,
Deputy Clerk U. S. District Court, Eastern District of Louisiana

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ORDER.

Considering the foregoing petition and the affidavit thereto,

It is Ordered that the said petition may be filed as prayed for and according to law.

(Signed) WAYNE G. BORAH, Judge.

New Orleans, Louisiana, January 29, 1935.

EXCEPTION OF ETIENNE DUGAS TO JURISDICTION.

65 Filed Feb. 6, 1935.

(Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

Now into Court comes Etienne Dugas, made defendant herein, and appearing first solely for the purpose of excepting to this Court's jurisdiction with respect, shows:

I.

That this Court is without jurisdiction ratione materiae and ratione persona.

II.

That all of the matters, things and conditions raised by the plaintiff herein in its original petition referred to in Article 1 of its so-called supplemental petition which is the subject of these exceptions were finally and definitely adjudicated by a decree of this Court of September 19th, 1932, as is also shown by Article 3 of plaintiff's alleged supplemental petition, and which decree became final on the ..... day of ....., 19..., which was the end of the term of this Court, and was not therefore subject to change, modification or alteration by this Honorable Court and could not be so changed, altered or modified, except on appeal; that at the end of said term there was not then pending any motion or procedure whatsoever undetermined which could be construed as delaying the finality of

the decree herein rendered and entered on September 19th, 1932; and, in that this Honorable Court has not now the power or authority to so change the decree by extending or broadening the effect of the injunction heretofore rendered herein so as to protect a third person, not made a party quoad respondent in said original proceedings.

III.

Respondent further shows that this alleged supplemental petition is not an attempt to aid or maintain this Honorable Court's original jurisdiction for the reason that there is no charge that the injunction heretofore rendered herein has been violated, but on the contrary, said alleged supplemental petition conclusively shows that it is an attempt to enjoin respondent from proceeding against a third person, on a separate and distinct solemn contract based on the statutory Law of the State of Louisiana, the scope and effect of which as to said third person has been fully and completely adjudicated by the Supreme Court of the State of Louisiana, the Court of final jurisdiction of said State, and after the said cause had been determined contradictorily with said third person through all of the Courts of said State, and has been determined unfavorably to said third party, in whose interest the alleged supplemental petition is herein filed.

66

IV.

Respondent further shows that this Honorable Court lacks jurisdiction to try and determine this matter for the further reason that the amount involved is less than $3,000.00; that the Supreme Court of the State of Louisiana did, on the fourth day of February, 1935, refuse a rehearing in the matter entitled "Etienne Dugas vs. New York Casualty Company," wherein

the judgment complained of and said alleged supplemental petition, was rendered; that said judgment is final and is reviewable, if at all, by the Supreme Court of the United States exclusively on writs of certiorari.

Wherefore, petitioner prays that this plea to the jurisdiction of the Court be maintained and that plaintiff's petition be dismissed at its cost and for all general and equitable relief consistent with this plea.

(Signed) I. E. UZZO,
(Signed) JAMES J. LANDRY,
Attorneys for Respondent.

67 State of Louisiana,
Parish of Orleans.

Before Me, the undersigned authority, personally came and appeared I. E. Uzzo, who after being duly sworn, deposes and says that he is one of the attorneys for the respondent herein; that the respondent is at this time in another part of the State of Louisiana and unable to return to the jurisdiction of this Court; that affiant is thoroughly familiar with all of the facts and circumstances of this case which are alleged in the above and foregoing pleading, and that they are, to his knowledge, true and correct; that the above and foregoing plea is, in his opinion, well founded in Law and not filed solely for the purpose of delay.

(Signed) I. E. UZZO.

Sworn to and subscribed before me this 6th day of February, 1935.

(Signed) SIDNEY T. DAVILLA,
(Seal).

BILL OF EXCEPTION TO RULING OF COURT OVERRULING EXCEPTION TO JURISDICTION.

68 Filed Feb. 25, 1935.

(Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

Be It Known that on the trial of the exception to the jurisdiction of this Court, the Court having heard the pleadings, the law and the argument, and having over-ruled the same, respondent Etienne Dugas, reserves this bill of exceptions and makes part hereof, plaintiff's supplemental petition and all of the documents thereto attached and made part thereof and respondent's plea to the jurisdiction of the Court together with all the documents attached to and made part thereof, and the evidence heard upon trial of the rule, all of which consists of the following:

1. Decree of District Court for the Eastern District of Louisiana, New Orleans Division, in the matter entitled, "American Surety Company of New York vs. Etienne Dugas, et als.," No. 20,782, dated September 19th 1932.

2. It is admitted by all parties that the term of Court in which the above decree was rendered and signed, expired November 21st, 1932.

3. Copy of petition and exceptions filed and judgment maintaining exceptions of prematurity, and of record in the matter entitled "Etienne Dugas vs. New York Casualty Company," No. 206-399 of the Docket of the Civil District Court, Parish of Orleans, State of Louisiana.

4. Certified copy of opinion and decree of the Supreme Court of the State of Louisiana, dated January 7th, 1935, and certificate of the Clerk of said Court, thereto attached, showing that a rehearing was refused in said matter on February 4th, 1935.

5. Certified copy of application for rehearing of the New York Casualty Company, in the matter entitled, "Etienne Dugas vs. New York Casualty Company," No. 32,960, of the Docket of the Supreme Court of the State of Louisiana.

6. Extract of report of Special Master, in the matter entitled "American Surety Company of New York vs. Etienne Dugas, et als.," No. 20,782, of the Equity Docket of the United States District Court for the Eastern District of Louisiana, New Orleans Division.

7. Copy of advertisemnt published in the Time-Picayune Paper of the City of New Orleans, State of Louisiana on the 19th day of April, 1932, in the last above named matter and published also in said newspaper on March 15th, 22nd, 29th, 1932, and April 5th and 12th, 1932.

This bill was submitted to all the parties to this litigation for their signatures and to the Honorable Wayne G. Borah Judge of said Court for his signature and such reasons as he may desire to assign.

(Signed) WAYNE G. BORAH, Judge.

New Orleans, La., February 25, 1935.

This has been submitted to us; no objection thereto.

DENEGRE, LEOVY & CHAFFE,
Attys. for American Surety Co. of N. Y.

I. E. UZZO,
JAMES J. LANDRY,
Attys. for Etienne Dugas.

N. O. Feby. 23/35.

PLEA OF EXCEPTION OF ETIENNE DUGAS TO RIGHT OR PROPRIETY OF ISSUING WRIT OF INJUNCTION, ETC.

69 Filed Feb. 6, 1935.

(Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

Now into Court comes Etienne Dugas and files this plea to the power and authority of this Honorable Court to issue the injunction prayed for in plaintiff's supplemental petition, returnable this day, which plea the defendant files in the alternative, and only in the event that his plea to the jurisdiction of the Court be over-ruled, and for the purpose stated, with respect, shows:

I.

That this Honorable Court is without power or authority to stay proceedings in any State Court except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy (R. S. 720; Mar. 3, 1911, c. 231, 265, 36 Stat. 1162) or under the Interpleader Act (Section 41, Title 26, U. S. C. A.) or, as more fully stated in Essanay Film Manufacturing Co. vs. Kane, 42 Supreme Court Reporter, Page 319, in the following words, to-wit:

"That appellant's objection to the action sought to be restrained rests upon a fundamental ground and one based upon a provision of the Constitution of the United States, does not render the effort to stay proceedings in the State Court any the less inconsistent with section 265, Judicial Code. That section would be of little force, did it not apply to cases where, save

for its prohibition, good ground would exist for enjoining the prosecution of a pending suit. And, as to the federal question involved, Congress at all times, commencing with the first Judiciary Act (September 24, 1789; 1 Stat. 73, 85, c. 20 25), has maintained upon the statute book such provisions as it deemed needful for reviewing judicial proceedings in the State Courts involving a denial of federal rights, but has confined them to a direct review by this Court, and deferred this until final judgment or decree in the State Court of last resort. At the same time, since 1793, the prohibition of the use of injunction from a Federal Court to stay proceedings in a State Court has been maintained continuously, and has been consistently upheld. Hull v. Burr, 234 U. S. 712, 723, 34 Sup. Ct. 892, 58 L. Ed. 1557, and cases cited. In exceptional instances the letter has been departed from while the spirit of the prohibition has been observed; for example, in cases holding that, in order to maintain the jurisdiction of a Federal Court properly invoked, and render its judgments and decrees effectual, proceedings in a State Court which would defeat or impair such jurisdiction may be enjoined. French Trustee v. Hay, 22 Wall. 250, 22 b. Ed. 857; Dietzsch v. Huidekoper, 103 U. S. 494, 497, 26 L. Ed. 497; Julian v. Central Trust Co. 193 U. S. 93, 112, 24 Sup. Ct. 399, 48 L. Ed. 629; Traction Co. v. Mining Co., 196 U. S. 239, 245, 25 Sup. Ct. 251, 49 L. Ed. 462; Looney v. Eastern Texas R. Co., 247 U. S. 214, 221, 38 Sup. Ct. 460, 62 L. Ed. 1084. The effect of this, as will be observed, is but to enforce the same freedom from interference on the one hand, that it is the prime object of section 265 to require on the other."

and as also fully set out in Russell vs. Detrick, 23 Federal Reporter (2d) 177, the following words, to-wit:

"The question remains whether the injunction was forbidden by section 265 of the Judicial Code (28

USCA 379), which prohibits the issuance of a writ of injunction by any Court of the United States to stay proceedings in any Court of a State, except in bankruptcy cases. The appellees contend that the present case is not governed by that section for the reason that the injunction runs not against the State Court, but against the plaintiffs in the actions in that Court. But violation of the section is not thus avoided. Essanay Film Company v. Kane, 258 U. S. 358, 42 S. Ct. 318, 66 L. Ed. 658; Peck v. Jenness, 7 How. 612, 625, 12 L. Ed. 841. It is true that the prohibition of injunction is not universal in its scope. It does not forbid a Federal Court to enjoin attempts to impair its own jurisdiction by proceedings in a State Court (French v. Hay, 22 Wall. 250, note, 22 L. Ed. 857), or to issue injunction where there is an entire lack of jurisdiction in the State Court (Simon v. Southern Railway Company, 236 U. S. 115, 35 S. Ct. 255, 59 L. Ed. 492), or to enjoin the enforcement of a judgment subject to attack as having been obtained through fraud (Marshall v. Holmes, 141 U. S. 589, 12 S. Ct. 62, 35 L. Ed. 870), or a judgment, the enforcement of which would be contrary to recognized principles of equity and the standards of good conscience (Wells Fargo & Co. v. Taylor, 254 U. S. 175, 183, 41 S. Ct. 93, 65 L. Ed. 205); or to enforce an unconscionable judgment fraudulently obtained (Ex Parte Simon, 208 U. S. 144, 29 S. Ct. 238, 52 L. Ed. 429)."

"But the present case does not belong in the class of any of the recognized exceptions. It is an injunction against the plaintiffs in a State Court, enjoining them against taking further steps in the prosecution of suits to cancel securities, and it is issued on behalf of plaintiffs in a Federal Court, not parties to the suits in the State Court, to defeat cancellation of the securities and protect their own interest therein. We think the injunction comes clearly within the prohibition of Section 265. Essanay Film Company v. Kane, supra.

"The argument that, if the suits in the State Court are permitted to be prosecuted to judgment before the suit in the Federal Court can be adjudicated, the latter adjudication will be made futile, is answered in Kline v. Burke Const. Co., 260 U. S. 226, 233, 43 S. Ct. 79, 67 L. Ed. 226, 24 A. L. R. 1077, where it is pointed out that the jurisdiction of a Federal Court, having been conferred by act of Congress, may be taken away in whole or in part by a later act of Congress such as the prohibition of injunction expressed in Section 265. But that section does not deprive a District Court of jurisdiction otherwise conferred by the federal statutes. It merely goes to the question of equity in the particular case presented, leaving the Court to determine whether the case is one in which injunctive relief is prohibited. Woodmen of the World v. O'Nell, 266 U. S. 292, 298, 45 S. Ct. 49, 69 L. Ed. 293; Smith v. Apple, 264, U. S. 274, 277, 44 S. Ct. 311, 68 L. Ed. 678."

71 Wherefore, respondent prays that the injunctive relief prayed for by the petitioner be denied and that since such relief is the main object of the present petition, its present suit be dismissed simultaneously with the denial of such relief and such further orders and decrees as may be consistent with the plea herein made.

(Signed) I. E. UZZO,
(Signed) JAMES J. LANDRY,
Attorneys for Respondent.

72 State of Louisiana,
Parish of Orleans.

Before Me, the undersigned authority, personally came and appeared I. E. Uzzo, who after being duly sworn, deposes and says that he is one of the attorneys for the respondent herein; that the respondent is at this time in another part of the State of Louisiana

and unable to return to the jurisdiction of this Court; that affiant is thoroughly familiar with all of the facts and circumstances of this case which are alleged in the above and foregoing pleading and that they are, to his knowledge, true and correct; that the above and foregoing plea is, in his opinion, well founded in Law and not filed solely for the purpose of delay.

(Signed) I. E. UZZO.

Sworn to and subscribed before me this 6th day of February, 1935.

(Signed) SIDNEY T. DAVILLA.

(Seal).

BILL OF EXCEPTION TO RULING OF COURT OVERRULING PLEA TO PROPRIETY OF ISSUING WRIT OF INJUNCTION.

Filed Nov. 15, 1935, nunc pro tunc as of Feb. 25, 35.

73 (Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

Be It Known that on the trial of the exception to the right of this Court to grant injunctive relief, the Court having heard the pleadings, the law and the argument, and having over-ruled the same, respondent Etienne Dugas, reserves this bill of exceptions and makes part thereof, respondent's plea to the right and power of this Honorable Court, to grant injunctive relief herein, and all the pleadings, documentary and other evidence made part of this bill heretofore reserved herein, to the ruling of this Honorable Court, denying respondent's plea to the jurisdiction of this Court.

This bill was submitted to all the parties to this litigation for their signatures and to the Honorable Wayne G. Borah, Judge of said Court for his signature, and such reasons as he may desire to assign.

(Signed) WAYNE G. BORAH, Judge.

New Orleans, La., Nov. 15, 1935, as of February 25, 1935.

EXCEPTION OF ETIENNE DUGAS OF NO RIGHT OR CAUSE OF ACTION.

74 Filed Feb. 6, 1935.

(Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

And now comes into Court, by way of second alternative plea, and in the event only that the pleas heretofore made are over-ruled Etienne Dugas, who respectfully shows:

I.

That petitioner, in the alleged supplemental petition, is without right to bring this action for the reason that said petition discloses that it is an attempt to obtain relief in favor of a third party not made a party to this action, neither as plaintiff nor defendant; further, that the plaintiff herein named is neither a proper party, a necessary party, nor an indispensable party.

II.

Respondent shows that the alleged supplemental petition herein discloses no cause of action.

III.

Respondent further shows that the said petition discloses no cause of action for the reasons set out fully in the decision of the Supreme Court of the State of Louisiana in the matter entitled Etienne Dugas vs. New York Casualty Company, which is now final, a certified copy of which is hereto attached and made part hereof;

Further, that if as a result of said judgment, the American Casualty Company is obligated to reimburse the New York Casualty Company any sum whatsoever, such obligation is the result of its having executed the suspensive appeal bond in the matter of Etienne Dugas vs. American Surety Company, and was a new and different undertaking and contract solemnly entered into under and by authority of State statute in a proceeding conducted in a State Court.

Further, if for any reason it might be said or argued that the New York Casualty Company would have a right to proceed against the American Surety Company of New York for any judgment that Etienne Dugas might obtain against the New York Casualty Company in the proceeding complained of, and that such right would be in violation of the injunction heretofore granted in favor of the American Surety Company alone, or in violation or contravention of the decree of this Honorable Court, relieving the said American Casualty Company from any further liability under its $20,000.00 bond, which respondent denies, then plaintiff's cause is based on an anticipated wrong that might or might not be committed by the New York Casualty Company, with which it is not alleged to even have been threatened.

75

Wherefore, respondent prays that these exceptions be maintained and that plaintiff's petition be dis-

missed at his cost and for such other relief as will be consistent herewith.

(Signed) I. E. UZZO,
(Signed) JAMES J. LANDRY,
Attorneys for Respondent.

76 State of Louisiana,
Parish of Orleans.

Before Me, the undersigned authority, personally came and appeared I. E. Uzzo, who after being duly sworn, deposes and says that he is one of the attorneys for the respondent herein; that the respondent is at this time in another part of the State of Louisiana and unable to return to the jurisdiction of this Court; that affiant is thoroughly familiar with all of the facts and circumstances of this case which are alleged in the above and foregoing pleading, and that they are, to his knowledge, true and correct; that the above and foregoing plea is, in his opinion, well founded in Law and not filed solely for the purpose of delay.

(Signed) I. E. UZZO.

Sworn to and subscribed before me this 6th day of February, 1935.

(Sgd.) SIDNEY T. DAVILLA.

(Seal).

BILL OF EXCEPTIONS TO RULING OF COURT OVERRULING EXCEPTIONS OF NO CAUSE OF ACTION.

Filed Nov. 15, 1935, nunc pro tunc as of Feb. 25, 1935.

77 (Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

Be It Known that on the trial of the exception of no right or cause of action, the Court having heard

the pleadings, the law and the argument, and having over-ruled the same, respondent Etienne Dugas, reserves this bill of exceptions and makes part hereof, respondent's exceptions of no right and no cause of action, together with all documents, pleadings and agreements attached and made part of respondent's bill reserved to the ruling of this Honorable Court, denying respondent's plea to the jurisdiction of this Court.

This bill was submitted to all the parties to this litigation for their signatures and to the Honorable Wayne G. Borah, Judge of said Court for his signature.

(Sgd.) WAYNE G. BORAH, Judge.

New Orleans, La., Nov. 15, 1935, as of Feb. 25, 1935.

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78 ANSWER TO THE MERITS.

Filed Feb. 6, 1935.

(Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

Now into Court comes Etienne Dugas, made defendant herein, reserving all of his rights under exceptions and pleas heretofore filed in the event same are over-ruled and especially pleads the same here in the alternative as filed, as if reiterated in full, for answer to plaintiff's petition, respectfully shows:

I.

Respondent admits the allegations of Article 1 of plaintiff's petition.

II.

Respondent admits the allegations of Article 2 of plaintiff's petition.

III.

Respondent admits the allegations of Article 3 of plaintiff's petition.

IV.

Respondent admits the allegations of Article 4 of plaintiff's petition.

V.

Respondent admits the allegations of Article 5 of plaintiff's petition.

VI.

Respondent admits the allegations of Article 6 of plaintiff's petition.

VII.

Respondent admits the allegations of Article 7 of plaintiff's petition, but alleges that judgment of the Civil District Court referred to herein was,
79 as is shown, and fully described in the final decree of the Supreme Court of the State of Louisiana in the matter entitled Etienne Dugas vs. New York Casualty Company, was contingent upon the progress of the improvement of the health of the said Dugas; the special master appointed in this matter revised the judgment of the Civil District Court according to the statute law of the State of Louisiana relative to compensation cases, as is fully

shown by the report of the master on file in this record, and which is made part hereof by reference as if fully copied in extenso, and which was confirmed and made the final decree of this Court.

VIII.

Respondent admits the allegations of Article 8 of plaintiff's petition.

IX.

Respondent admits the allegations of Article 9 of plaintiff's petition.

X.

Respondent admits the allegations of Article 10 of plaintiff's petition, but especially alleges that the reason set forth was not the only reason for reducing the amount. Respondent shows that the cost of litigation in the State Court in the event of an adverse ruling by the trial Court is cheaper than in the Federal Courts. Furthermore, respondent believed and was affirmed in that belief by the final judgment of the Supreme Court of the State of Louisiana that the contract sued upon in the matter referred to was a judicial bond, having for its existence and consideration purely and wholly the statutory law of the state of Louisiana and that, therefore, the ruling of the State's highest tribunal, irrespective of how it might have been eventually determined, would have been the greatest authority as to the effect and scope thereof. Furthermore, petitioner herein was not a party to that suit.

XI.

Respondent admits the allegations of Article 11 of plaintiff's petition.

XII.

Respondent admits the allegations of Article 12 of plaintiff's petition and especially alleges that it was on the insistence of the New York Casualty
80 Company, defendant and appellee, in the matter complained of, who insisted upon arguing the substantive rights and effect of the contract over and above the question of prematurity of action, because, they said, one could not be discussed without the other, and in support of these allegations, respondent attaches hereto and makes part hereof, a copy of his original brief filed in said cause in the said Supreme Court of the State of Louisiana, together with a copy of the original brief filed in the Supreme Court in said matter by the New York Casualty Company.

Respondent further attaches hereto and makes part hereof, copy of the supplemental brief filed by your respondent, on the insistence of the said Supreme Court, as a result of the contention of the said New York Casualty Company that the pleas of prematurity and of right or cause of action, could not be separated.

XIII.

Respondent admits the allegations of Article 13 of plaintiff's petition.

XIV.

Respondent admits the allegations of Article 14 of plaintiff's petition and especially alleges that on the 4th day of February, 1935, the application for rehearing herein referred to was refused by the Supreme Court of the State of Louisiana and for the purpose of showing that the said Supreme Court of the State of Louisiana gave to the said New York Casualty Company full consideration on every point of substansive

and adjective right which could legally be raised in the proceedings as carried on and conducted by the litigants therein involved, respondent attaches hereto and makes part hereof, a certified copy of the application for rehearing and a copy of the brief of the New York Casualty Company, in support of said application filed in the said Supreme Court of the State of Louisiana. Respondent also attaches hereto a certified copy of the order of Court refusing said rehearing.

XV.

Respondent admits the allegations of Article 15 of plaintiff's petition.

81

XVI.

Respondent denies the allegations of Article 16 of plaintiff's petition.

XVII.

Respondent denies the allegations of Article 17 of plaintiff's petition and specifically alleges that the conclusions therein drawn are glaringly erroneous as is best evidenced by reference to the decision of the Supreme Court of the State of Louisiana, a copy of which is attached hereto and made part of plaintiff's petition.

XVIII.

Respondent denies the allegations of Article 18 of plaintiff's petition, and especially alleges that it is not entitled to any relief since it is not an interested party in the suit of Etienne Dugas vs. the New York Casualty Company, and since the Courts of Equity will grant no relief against the effect of a contract which

is not charged to have been entered into collusively or in error or fraud or on account of violence.

XIX.

Respondent denies the allegations of Article 19 of plaintiff's petition.

XX.

Respondent denies the right of the plaintiff to enjoin the executing officer of State Court in the circumstances of this case; denies the jurisdiction of this Court to issue and entertain such an injunction in a case of this kind.

XXI.

Respondent denies each and every allegation not hereinabove especially admitted.

Wherefore, respondent prays that the rule nisi herein issued be dismissed and that the injunctive relief prayed for he denied and finally, that there be judgment in favor of respondent and against the petitioner, dismissing his suit at cost and for all general and equitable relief, and such orders and decrees as the Court may deem necessary and proper in the premises.

(Sgd.) I. E. UZZO,
(Sgd.) JAMES J. LANDRY,
Attorneys for Respondent.

82 State of Louisiana,
Parish of Orleans.

Before Me, the undersigned authority, personally came and appeared I. E. Uzzo, who, after being duly sworn, deposes and says that he is one of the attorneys for the Respondent herein, and that he has aided in the preparation of the foregoing pleadings; that he knows all of the allegations therein contained to be true and correct, and that the said respondent is absent

from the city; that affiant is more familiar with all of the circumstances of this case than the respondent.

(Sgd.) I. E. UZZO.

Sworn to and subscribed before me this 6th day of February, 1935.

(Sgd.) SIDNEY T. DAVILLA.

(Seal).

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83 PRELIMINARY INJUNCTION.

Filed Feb. 13, 1935.

(Title Omitted.)

Preliminary Injunction on Supplemental Petition.

This cause came on to be heard at this term on supplemental petition of plaintiff, American Surety Company of New York, in aid of and to effectuate as against Etienne Dugas, one of the defendants herein, the previous decree herein of September 19, 1932, and was argued by counsel; and, thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, to-wit:

That, upon the filing by plaintiff, American Surety Company of New York, of a bond in the sum of One Thousand Dollars ($1,000.00) with good and sufficient surety, and its approval by the Court, a preliminary injunction issue enjoining and restraining Etienne Dugas, his attorneys, agents and representatives from taking any steps to institute, prosecute or execute any judgment in any suit or proceeding (and in particular in proceeding entitled Etienne Dugas v. New York Casualty Company, No. 206,399 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana) in any State Court or in any other Federal Court on any claim growing out of or connected with the appeal bond executed by New York Casualty Com-

pany as surety and American Surety Company of New York as principal in the sum of Ten Thousand Dollars ($10,000.00) and filed in connection with the appeal taken by American Surety Company of New York from judgment dated April 14, 1931, in suit entitled Etienne Dugas v. American Surety Company of New York, No. 188,642 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana; and enjoining and restraining Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, his successors in office, agents, servants, employees and representatives from executing or taking any action to execute any judgment, decree or order which may be issued against New York Casualty Company in suit of Etienne Dugas v. New York Casualty Company, which is hereinabove mentioned.

This preliminary injunction shall remain in full force and effect pending the determination of this cause on the merits, and pending any further action by the Court.

(Sgd.) WAYNE G. BORAH,
United States District Judge.

New Orleans, La., February 13, 1935.

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84 BILL OF EXCEPTIONS.

Filed Nov. 15, 1935, nunc pro tunc as of Feb. 25 1935.

(Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

Be It Known that on the trial of the rule nisi herein, to show cause why a preliminary injunction should not be granted as prayed for by petitioner herein, the Court after hearing the pleadings, evidence, law and

argument of counsel, granted to petitioner the relief prayed for, and respondent reserved this bill of exceptions to the judgment and ruling of the Court, and he makes part of this bill, all of the evidence considered at the trial hereof, which consists of the documents, papers, agreements and other evidence made part of the bill of exceptions reserved to the overruling of the Court of respondent's plea to the jurisdiction of this Honorable Court.

This bill was submitted to all the parties to this litigation for their signatures and to the Honorable Wayne G. Borah, Judge of said Court for his signature and such reasons as he may desire to assign.

(Signed) WAYNE G. BORAH, Judge.

New Orleans, La., Nov. 15th, 1935, as of February 25, 1935.

STIPULATION OF COUNSEL THAT MATTER BE SUBMITTED ON SAME PLEADINGS SUBJECT TO ALL BILLS OF EXCEPTION AND ON SAME EVIDENCE AS APPLICATION FOR PRELIMINARY INJUNCTION.

85 Filed Feb. 25, 1935.

(Title Omitted.)

Agreement of Counsel to submit for Final Hearing the Case presented by the Supplemental Petition of American Surety Company of New York, Plaintiff herein, on the same Evidence as was introduced on the Application of the said Plaintiff for a Preliminary Injunction under the said Supplemental Petition.

It is stipulated and agreed by and between Denegre, Leovy & Chaffe, attorneys for American Surety Company of New York, plaintiff herein, I. E. Uzzo and James J. Landry, attorneys for Etienne Dugas, de-

fendant herein, and Frank W. Hart, attorney for Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, State of Louisiana, that this case be and it hereby is submitted for final trial on the supplemental petition of the said plaintiff, upon the same pleadings filed by respondents and subject to all the bills of exceptions reserved by him, and upon the same evidence as was had and produced before the Court at the hearing upon the application for a preliminary injunction applied for in the said Supplemental petition and hereinbefore allowed, and that the matter is herewith submitted to the Court for final decision without further argument.

(Sgd.) DENEGRE, LEOVY & CHAFFE,
Attorneys for American Surety Company of New York, Plaintiff.
I. E. UZZO,
JAMES J. LANDRY,
Attorneys for Etienne Dugas, Defendant.
FRANK WM. HART,
Attorney for Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, State of Louisiana.

New Orleans, Louisiana, February 25, 1935.

PERMANENT INJUNCTION.

86 Filed Feb. 25, 1935.

(Title Omitted.)

This cause came on to be heard at this term on final hearing on supplemental petition of plaintiff, American Surety Company of New York, in aid of and to

effectuate as against Etienne Dugas, one of the defendants herein, the previous decree herein of September 19, 1932, and was submitted by counsel and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, to-wit:

That an injunction issue herein permanently enjoining and restraining Etienne Dugas, his attorneys, agents and representatives from taking any steps to institute, prosecute or execute any judgment in any suit or proceeding (and in particular in proceeding entitled Etienne Dugas vs. New York Casualty Company, No. 206,389 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana) in any State Court or in any other Federal Court, on any claim growing out of or connected with the appeal bond executed by New York Casualty Company as surety and American Surety Company of New York as principal in the sum of Ten Thousand Dollars ($10,000.00) and filed in connection with the appeal taken by American Surety Company of New York from judgment dated April 14, 1931, in suit entitled Etienne Dugas vs. American Surety Company of New York, No. 188,642 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana; and permanently enjoining and restraining Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, his successors in office, agents, servants, employees and representatives from executing or taking any action to execute any judgment, decree or order which may be issued against New York Casualty Company in suit of Etienne Dugas against New York Casualty Company, which is hereinabove mentioned.

87 It is further ordered, adjudged and decreed that costs in this supplemental proceeding shall be taxed against Etienne Dugas, one of the defendants herein, and that preliminary injunction bond

heretofore filed by American Surety Company of New York on February 13, 1935, be and it hereby is canceled and the surety thereon released.

(Signed) WAYNE G. BORAH,
United States District Judge.

New Orleans, Louisiana, February 25th, 1935.

Approved as to form only.
I. F. UZZO,
JAMES J. LANDRY,
Of Counsel for Dugas.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

88 Filed Mar. 4, 1935.

(Title Omitted.)

Findings of Fact.

I.

I find as facts the allegations of fact contained in Articles I to XV, inclusive of the supplemental petition herein, all of which said allegations are admitted in the answer herein filed by Etienne Dugas, defendant; and I find that Maurice J. Hartson, a resident of the Parish of Orleans, State of Louisiana, was and is the Civil Sheriff of the Parish of Orleans, State of Louisiana, and as such is the official charged with the duty of executing the decrees and orders of the Civil District Court for the said Parish.

II.

I find as a fact that, as stated in Article XIV of the answer of Etienne Dreas, the Supreme Court of Louisiana, on February 4, 1935, denied the application of New York Casualty Company for a rehearing, described in Article XIV of the supplemental petition herein.

Conclusions of Law

I conclude that this Court has jurisdiction of the subject matter presented by the supplemental petition herein, which I regard as a supplemental bill in aid of and to effectuate the original decree of this Court in this matter, dated September 19, 1932. Rose v. Wadsworth, 150 U. S. 401; Wilson v. Alexander, 276 Fed. 875 (C. C. A. 8); Local Loan Co. v. Hunt, 292 U. S. 234.

That the term of Court at which the original decree herein had expired is immaterial. As stated by the Court of Appeals for the Eighth Circuit, in McCutchen v. Union Trust Co., 271 Fed. 586, at page 593:

"The fact that the terms of Court at which the foreclosure decree and the order for the receivers' sale were entered had expired is not important. The decision of the State Courts, giving to the order an effect not contemplated when it was made, and involving also the foreclosure decree according to Hardin's contention, occurred subsequently. It was proper to bring the subsequent situation so created to the attention of the Court below by supplemental bill."

A similar situation existed and a like result was reached by the Court of Appeal for this Circuit in Wilson v. Alexander, 276 Fed. 875, 879-880.

As to the contention that the Court has not juris-
diction of the present supplemental bill because the
relief therein invoked is in favor of the New York
Casualty Company, which was not a party to the
original proceeding herein my conclusion is that since
the original decree herein of September 19, 1932, re-
leased the American Surety Company of New York,
plaintiff herein, from any and all further liability on
account of its statutory bond of February 12, 1930, and
enjoined the defendants, including Duran, from insti-
tuting or prosecuting in any State Court any suit against
or against the American Surety Company of New York on ac-
count of any right or claim growing out of said bond,
and since the original petition specifically described,
in Article V thereof, suit of the said Duran against
the American Surety Company of New York, plain-
tiff herein, in the Civil District Court for the Parish
of Orleans, No. 188,642 of the docket of that Court,
and since it was on account of bond given by the said
American Surety Company of New York as principal
and the New York Casualty Company as surety, in
connection with an appeal from a judgment in favor
of Duran and against the said American Surety Com-
pany of New York in that suit, that Duran is now
attempting to hold the New York Casualty Com-
pany as surety on the bond of the American Surety
Company of New York, it is obvious that under the law
of Louisiana the said New York Casualty Company,
as surety on the appeal bond, would, in the event of
payment by it of any judgment obtained by Duran,
be legally subrogated to the rights of the said Duran
and could and would look to the American Surety
Company of New York for reimbursement and, there-
fore, the attempt to collect from the surety on the
said appeal bond is an indirect method of pro-
90 ceeding against the principal on the said bond,
American Surety Company of New York,
which it was the intention and purpose of the order
and decree herein of September 19, 1932, to forbid.

This view is supported by the recent decision of the Supreme Court in Local Loan Co. v. Hunt, 292 U. S. 234. It is further supported by the clear purposes of the Federal Interpleader Act (May 8, 1926, c. 273, paragraphs 1-3, 44 Stat. 416, United States Code Annotated Title 28, Section 41, sub-section 26), which vests the Federal Courts with jurisdiction of an interpleader suit such as was originally herein brought and authorizes it to hear and determine the cause and to discharge the complainant from further liability and to issue an injunction enjoining all defendants from instituting or prosecuting any suit or proceeding in any State Court or in any other Federal Court on account of such bond.

Nor does it matter that the amount involved in the suit of Dugas against the New York Casualty Company in the State Court is less than Three Thousand Dollars ($3,000.00), because this is a supplemental bill; and, in such case, the United States Court is protecting its previously acquired jurisdiction, which has resulted in a decree giving rights which are attacked by subsequent proceedings brought in a State Court. Wilson v. Alexander, supra, page 879. See also Local Loan Co. v. Hunt, supra, in which it was paid at page 239:

"The proceeding being ancillary and dependent, the jurisdiction of the Court follows that of the original cause, and may be maintained without regard to the citizenship of the parties or the amount involved, * * *"

As to the proposition that this Court is without power or authority to stay proceedings in any State Court, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy or under the interpleader act, this is a supplemental bill in a proceeding under the interpleader act

and the mere question of the power of the Court to restrain the execution of a judgment from which an appeal had been taken and an appeal bond given, was closed by the decree of September 19, 1932, from which no appeal was taken and which has long since become final. That question was definitely raised by Dugas in the original proceedings and the conclu-
91 sions reached were adverse to his contentions and that matter cannot now be reopened. While I am inclined to believe that the action of Dugas, in attempting to collect from the New York Casualty Company on a suit in the State Court, was forbidden by the original decree of September 19, 1932, it is clearly desirable to remedy any possible doubt on the literal interpretation of the original decree herein, and to follow out the spirit of that decree by granting the injunctive relief now sought specifically restraining Dugas from taking any action against the New York Casualty Company on account of its execution, as surety, of the appeal bond which is the basis of the present suit in the State Court.

(Signed) WAYNE G. BORAH,
U. S. Dist. Judge.

PETITION FOR APPEAL AND ORDER ALLOWING SAME.

92 Filed May 23, 1935.

(Title Omitted.)

To the Honorable Wayne G. Borah, Judge, of the United States District Court, for the Eastern District of Louisiana, New Orleans Division:

The above named defendant, Etienne Dugas, feeling herself aggrieved by the final decree entered on the 25 day of February, A. D. 1935, does hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit, for the reasons specified in the

assignment of errors, which is filed herewith, and he prays that his appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decrees were based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, Louisiana.

And your petitioner further prays that the proper order touching the security to be required of him to perfect his appeal be made.

I. E. UZZO,
JAMES J. LANDRY,
Solicitors for Defendant,
Etienne Dugas.

The petition granted and the appeal allowed upon giving bond conditioned as required by law in the sum of $250.00 Dollars.

(Signed) WAYNE G. BORAH, Judge.

New Orleans, La., May 23rd, A. D. 1935.

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93 ASSIGNMENT OF ERRORS.

Filed May 23, 1935.

(Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

And now, on the 23rd day of May, 1935, came the defendant, Etienne Dugas, by his solicitors, Ignatius Edward Uzzo and James J. Landry and says the decree entered on the 25th day of February, 1935, in the above cause is erroneous and unjust to defendant.

First. Because this Honorable Court erred in overruling defendant's exception to the jurisdiction of the

Court, ratione materiae and ratione persona, in, that the bill brought, is to restrain a suit, between defendant and a third party not a party to this suit and not a party to any previous suit in any Federal Court, and not based on any contract or obligation over which any Federal Court had had jurisdiction or in connection with which any decree had been rendered by any such Court; it does not involve any Federal question, is not a bill to restrain or regulate, revive, modify or correct any previous decree of any Court of the United States of America, and there is no fund or property in the custody of any such Court to be protected or awaiting final disposition thereof, and said bill cannot be classed as an auxiliary suit giving the United States District Court for the Eastern District of Louisiana ancillary jurisdiction, but is an original bill and lacks the minimum jurisdictional amount fixed by law for such purpose.

Second. Because, even if this Honorable Court had the jurisdiction to pass upon the matters presented in plaintiff's bill, it erred in granting the injunctive relief prayed for, because this action is to enjoin further proceedings in a suit that had been prosecuted through the State Courts of final jurisdiction, litigated between defendant and a third party not a party to this suit or any previous suit in any Federal Court on a contract executed under a State Statute, in the course of legal proceedings in a State Court, and in which proceeding the plaintiff in the present cause was not and could not be made a party, and the present suit is not in connection with any bankruptcy; nor is it an interpleader proceeding.

Third. Because, the learned Trial Court erred in overruling defendant's exceptions of no right and of no cause of action, in that:

(a) The relief sought by plaintiff is to relieve a third party from the effect of a judgment ob-

94 tained in the Court of final jurisdiction in this State (Louisiana), in a litigation which involved no Federal question and in which plaintiff was and is not a party directly or indirectly, involves less than the minimum jurisdictional amount required to give Federal Courts jurisdiction, and plaintiff does not appear in a representative capacity, nor claims to have authority from such third person to obtain the relief sought in its behalf.

(b) Plaintiff's bill does not allege that it has been called upon nor even that it will be called upon to reimburse the third party against whom defendant has proceeded in the State Court in the event that defendant obtains a money judgment against said third person finally. But in the event that such would be the case, if as a matter of fact and law, the contract, which is the basis of the suit now sought to be enjoined, could be construed as forming part of and being incidental to plaintiff's qualifying bond which was the basis of the original bill of interpleader, then plaintiff has a perfect defense to any claim that may be made against it as a result thereof by reason of the discharge gained by it in the decree of the District Court on its said bill of interpleader. If, however, as defendant contends is the true situation, the contract forming the basis of the suit pending in the State Court is a new, separate, different and distinct contract, then such contract is the law between the parties thereto and in the absence of collusion, fraud or violence, or of error of fact or law, the Courts of Equity can give no relief against the effects thereof. The learned Judge of the District Court further erred in not following the decision of the Supreme Court of Louisiana in the matter sought to be enjoined, in as much as said decision determines the obligation and effect of a contract entered into, in the course of a legal proceeding and under and by virtue of a state statute for such cases specifically enacted, and it is not charged

that such statute violates any Federal Statute or the Federal Constitution or the Constitution of Louisiana.

Fourth. The learned Judge of the District Court erred, for the reasons set forth above, in granting the preliminary injunction prayed for by plaintiff herein.

Fifth. The learned Judge of the District Court erred, for the reasons set forth above, in granting the final injunction prayed for by the plaintiff herein.

95 Wherefore, the defendant prays that said decree be reversed and the Circuit Court of Appeals directed to maintain the exceptions to the jurisdiction of the United States District Court for the Eastern District of Louisiana, New Orleans Division; or of any other Federal Court; that in the alternative, the issuance of preliminary and permanent injunctions herein, be decreed improper, and that the ruling of the learned Trial Judge, over-ruling defendant's exception to the right or propriety of granting injunctive relief be reversed; that the ruling of the Trial Judge, overruling defendant's exceptions of no cause and of no right of action be reversed, and finally that the writ of injunction herein issued be recalled, rescinded and avoided and that there be judgment herein in favor of defendant and against plaintiff, dismissing its suit.

(Sgd.) I. E. UZZO,
(Sgd.) JAMES J. LANDRY,
Solicitors for Defendant,
Etienne Dugas.

New Orleans, May 22, 1935.

Service accepted, and citation waived, with reservation of all rights.

(Sgd.) DENEGRE, LEOVY & CHAFFE,
Attorneys for American Surety Co. of N. Y.

96 APPEAL BOND.

Filed May 24, 1935.

Know all Men by these Presents, that we, Etienne Dugas, as principal, and Globe Indemnity Company, as surety, are held and firmly bound unto H. J. Carter, Clerk of the United States District Court for the Eastern District of Louisiana, New Orleans Division, in the full and just sum of Two Hundred Fifty dollars to be paid to the said H. J. Carter, certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 23 day of May, in the year of our Lord one thousand nine hundred and thirty-three.

Whereas, lately at a session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between Etienne Dugas and the American Surety Company of N. Y., No. 20,782, a judgment was rendered against the said Etienne Dugas, and the said Etienne Dugas having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said American Surety Company, citing and admonishing it to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the condition of the above obligation is such, that if the said Etienne Dugas shall prosecute to effect, and answer all damages and costs if he fail to make

his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) ETIENNE DUGAS,
By I. E. UZZO, Atty.
(Signed) GLOBE INDEMNITY COMPANY, (Seal)
G. B. HARRISON, JR.,
(Seal) Resident V. Pres.

Sealed and delivered in presence of—
.....
.....

Approved by—
(Signed) WAYNE G. BORAH, Judge.

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97 PRAECIPE.

Filed May 23, 1935.

(Title Omitted.)

It is stipulated by and between undersigned counsel representing all parties at interest herein, that the record of appeal in this matter shall be made up of the following:

1. Petition and bill of Interpleader and affidavit filed June 6th, 1931.

2. Temporary restraining order, June 5th, 1931.

3. Order to show cause, dated June 5th, 1931.

4. Judgment Civil District Court, in matter entitled "Etienne Dugas vs. American Surety Co.," No. 188-642 of Docket of said Court.

5. Suspensive Appeal Bond in above matter.

6. Qualifying Bond of Lumberman's Reciprocal Association, with American Surety Co. of New York, as surety.

7. Exception of no right or cause of action filed by Etienne Dugas June 23, 1931.

8. Plea of Estoppel filed by Etienne Dugas June 23, 1931.

9. Answer of Etienne Dugas filed June 23, 1931.

10. Claim of Etienne Dugas in Concursus Proceedings.

10½. Interlocutory Injunction dated June 25, 1931.

11. Decree on the petition and Bill of Interpleader and writ of Injunction, rendered and signed September 19, 1932.

12. Abstract of findings of Special Master.

13. Stipulation and decree of District Court, based on Special Master's Report, signed April 20, 1933.

14. Copy of petition and exceptions filed and judgment maintaining exceptions of prematurity, and of record in the matter entitled, "Etienne Dugas vs. New York Casualty Co.," No. 206,399 of the Docket of the Civil District Court, Parish of Orleans, State of Louisiana.

15. Petition for removal to United States District Court and notice thereof.

98 16. Certified copy of opinion and decree of the Supreme Court of the State of Louisiana, dated January 7, 1935, and a certificate of the Clerk of said Court, thereto attached, showing that a rehearing was refused in said matter on February 4, 1935.

17. Certified copy of application for rehearing of the New York Casualty Company, in the matter entitled "Etienne Dugas vs. New York Casualty Co.," No. 32,960 of the Docket of the Supreme Court of the State of Louisiana.

18. Petition for Injunction in present suit filed January 29, 1935.

19. Plea or exception to jurisdiction of Court, filed by Etienne Dugas February 6, 1935.

20. Bill of Exceptions reserved to ruling of the Court overruling exception to jurisdiction filed February 25, 1935.

21. Plea or exception to the right or propriety of issuing writ of injunction as prayed for by plaintiff, filed by Etienne Dugas February 6, 1935.

22. Bill reserved to the ruling of the Court overruling the plea on exception to the right or propriety of issuing writ of injunction filed by Etienne Dugas February 25, 1935.

23. Exception of no right and no cause of action filed by Etienne Dugas February 6, 1935.

24. Bill reserved to the ruling of the Court overruling the exceptions of no right and no cause of action filed by Etienne Dugas February 25, 1935.

25. Answer to the merits filed by Etienne Dugas February 6, 1935.

26. Preliminary injunction dated February 25, 1935.

27. Bill reserved to the judgment of the Court, granting plaintiff injunctive relief prayed for dated February 25, 1935.

28. Stipulation of counsel dated March 4, 1935, to the effect that the matter be submitted on the same pleadings subject to all bills of exceptions reserved and upon the same evidence as was had and tried before the Court at the hearing upon application for a preliminary injunction.

29. Permanent Injunction, dated February 25, 1935.

30. Findings of fact and conclusions of law.

31. Assignment of Errors.

99 32. Motion or petition of appeal.

33. Bond of Appeal.

34. This Stipulation.

(Signed) I. E. UZZO,
(Signed) JAMES J. LANDRY,
Solicitors for Defendant,
Etienne Dugas.
(Signed) DENEGRE, LEOVY & CHAFFE,
Solicitors for American Surety Company of New York.

100 Clerk's Office:

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 99 pages contain and form a full, true and complete transcript of the record, assignment of errors and all proceedings in the cause entitled "American Surety Company of New York vs. Etienne Dugas, et als.," No. 20,782 In Equity of the Docket of this Court as made up in accordance with praecipe for transcript copied therein.

Witness My Hand and the seal of the said Court at the City of New Orleans, Louisiana, this 15th day of November, A. D. 1935.

H. J. CARTER, Clerk,
By H. W. NIEHUES,
(Seal) Deputy Clerk, U. S. District Court, Eastern District of Louisiana.

[fol. 118] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of February 27th, 1936

No. 7961

ETIENNE DUGAS

versus

AMERICAN SURETY COMPANY OF NEW YORK

On this day this cause was called, and, after argument by James J. Landry, Esq., for appellant, and Harry McCall, Esq., for appellee, was submitted to the Court.

[fol. 119] OPINION OF THE COURT AND DISSENTING OPINION OF SIBLEY, CIRCUIT JUDGE—Filed April 9, 1936

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7961

ETIENNE DUGAS, Appellant,

versus

AMERICAN SURETY COMPANY OF NEW YORK, Appellee

Appeal from the District Court of the United States for the Eastern District of Louisiana

(April 9, 1936)

Before Foster, Sibley and Walker, Circuit Judges

WALKER, Circuit Judge:

On February 12, 1930, the appellee, American Surety Company of New York, executed as surety a bond in the sum of $20,000.00, Lumberman's Reciprocal Association, a

Texas corporation, being the principal in that bond, which, as provided by a Louisiana statute, was conditioned in effect that said principal shall make prompt payment of all claims arising and accruing to any person during the term of said bond, by virtue of any policy or policies of described classes of insurance issued by it during the term [fol. 120] of the bond upon the life or person of any citizen of the State of Louisiana. That bond was given to enable the principal in it to do business in Louisiana, and is herein referred to as the qualifying bond. On June 6, 1931, the appellee filed in the court below a bill of interpleader under the statute 28 USCA, §41 (26). That bill contained allegations to the following effect: The business of said Lumberman's Reciprocal Association was chiefly the writing of workmen's compensation insurance. On July 31, 1930, a named Texas court appointed a named person Receiver of said Association, and said Association is still in the hands of said Receiver. Claims against said Association's qualifying bond are far in excess of the amount of said bond. Some of the claimants now are and at all times mentioned in the bill were citizens of named states other than Louisiana, and some of these claimants now are and at all times mentioned in the bill were citizens of the State of Louisiana. Two suits against petitioner (appellee) on said qualifying bond are pending in Louisiana State Courts. In one of these suits, brought by Etienne Dugas (appellant), judgment in favor of the plaintiff therein was rendered on April 14, 1931, requiring the defendant therein (the appellee) to pay to appellant $20.00 a week for a period not to exceed three hundred weeks. Appellant appealed from the judgment, giving a suspensive appeal bond in the sum of $10,000.00, the New York Casualty Company being the surety in that bond, which contain the following condition: "Now the condition of the above obligation is such that the above bounden American Surety Company of New York shall prosecute diligently its appeal, and shall satisfy whatever judgment may be rendered against it or that the same shall be satisfied by the proceeds of its estate, real or personal, if it be cast in the appeal, otherwise that the said New York Casualty Company, State of New York, shall be liable in its [fol. 121] place." Appellee disclaimed any interest in the amount of its qualifying bond, except to pay the amount of the same to persons lawfuly entitled thereto, and ap-

pellee prayed permission to pay into court the amount of its said bond for distribution among those lawfully entitled thereto after the payment of all lawful costs. A list of claims against said bond was attached to the bill. That bill contained prayers: That appellee be authorized and directed to deposit in the Registry of the court, the sum of $20,000.00; that appellant and other claimants be cited to interplead and settle between themselves their rights or claims to the amount of said bond; that appellants and other defendants in said bill be restrained and enjoined from instituting or prosecuting in any State Court, or in any other Federal Court, any suit on account of any right or claim growing out of said bond; and that appellee be released from all further liability on account of said bond, upon a determination being had as to the amount due thereon, and upon the payment by appellee of a sum, if any be found due thereon, over and above the fund paid into the Registry of the Court. Pursuant to an order made by the court upon the filing of that bill appellee paid into the Registry of the Court the sum of $20,000.00. Appellant appeared in that cause, filed an exception to the bill of complaint therein, ap lea in bar, and an answer. On September 19, 1932, the court entered a decree in that cause which adjudged: That appellee, by the deposit of $20,000.00 made in that cause, complied with all obligations under or on account of said qualifying bond, or under or on account of any similar previous bonds, and that appellee "be and it is hereby released and discharged from any and all further liability on account of said bonds or any of them"; and "that all defendants hereby be and they hereby are perpetually restrained and enjoined from instituting or prosecuting in any State Court, or in any other Federal Court, [fol. 122] any suit against said American Surety Company of New York on account of any right or claim growing out of said bond, or any similar previous bond." There was no appeal from the final decree rendered in the interpleader suit, and that decree remained in full force and effect. By a provision of that decree a Special Master was appointed to determine the manner in which the balance of the fund remaining on deposit in the registry of the Court, after deducting the amounts of costs and attorney's fees allowed by the court, shall be distributed between the defendants in the cause. The Special Master's report showed that the

claim of the appellant was allowed in the sum of $4160.68, and that appellant's pro rata share of the fund in court for distribution among the several claimants was $1141.29. Counsel for the various claimants, including appellant, entered into a written stipulation acquiescing in that report of the Special Master; whereupon the court confirmed that report, and ordered the distribution of the fund in court in accordance with that report.

On March 7, 1934, appellant filed in a Louisiana State court a suit against the New York Casualty Company, the surety on the above mentioned appeal bond given by appellee, seeking the recovery of the sum of $3,019.39, for an alleged breach of the condition of that bond, that sum being the amount, $4160.68, of appellant's claim allowed by the Special Master and the sum, $1141.29, received by the appellant under the court's order of distribution. On March 14, 1934, appellant filed an amended and supplemental petition reducing the amount claimed by him in said suit to $2,999.00. The court in which that suit was brought maintained an exception of prematurity, and dismissed that suit. From that judgment appellant appealed to the Supreme Court of Louisiana, which court on January 7, 1935, annulled the judgment appealed from, over-ruled the plea of prematurity, and remanded the case for further proceedings. On January 29, 1935, appellee filed a supplemental [fol. 123] petition in the above mentioned interpleader suit. That pleading recited what had occurred in the interpleader suit, and in the suit brought by appellant against the New York Casualty Company. That supplementary petition named as parties defendant appellant and Maurice J. Hartson, Civil Sheriff of the Parish of Orleans, State of Louisiana. That pleading alleged: "Maurice J. Hartson, a resident of this Parish and State, was and is Civil Sheriff of the Parish of Orleans, State of Louisiana, and as such is the official charged with the duty of executing the decrees and orders of the Civil District Court for the said Parish, and for that reason plaintiff desires that he be made a party hereto in order fully to guarantee the effectiveness of the relief herein sought". By exception interposed by appellant the right of appellee to maintain the supplementary petition was challenged on the grounds that the court ceased to have jurisdiction to make further orders or decrees in the

interpleader suit upon the expiration of the term at which the final decree therein was rendered, on the ground that the amount involved is less than $3,000.00; and on the ground that the injunction sought was forbidden by Statute, 28 USCA, §379. After those exceptions were over-ruled appellant filed an answer on the merits. On a submission of the cause on the supplemental petition and on the above mentioned decree of September 19, 1932, the Court ordered the issuance of a preliminary injunction as prayed for in said supplemental petition. By stipulation of counsel the cause was submitted for final decree on said supplemental petition, upon the pleadings filed by appellant, and upon the same evidence as was produced at the hearing of the application for a preliminary injunction applied for in said supplemental petition, and allowed by the court. Thereupon the court made findings of facts and conclusions of law, and rendered a decree which adjudged: "That an injunction issue herein permanently enjoining and restraining Etienne Dugas, his attorneys, agents and represent-[fol. 124] atives from taking any steps to institute, prosecute or execute any judgment in any suit or proceeding (and in particular in proceeding entitled Etienne Dugas vs. New York Casualty Company, No. 206,399 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana) in any State Court or in any other Federal Court, on any claim growing out of or connected with the appeal bond executed by New York Casualty Company as surety and American Surety Company of New York as principal in the sum of Ten Thousand Dollars ($10,000.00) and filed in connection with the appeal taken by American Surety Company of New York from judgment dated April 14, 1931, in suit entitled Etienne Dugas vs. American Surety Company of New York, No. 188,642 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana; and permanently enjoining and restraining Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, his successors in office, agents, servants, employees and representatives from executing or taking any action to execute any judgment, decree or order which may be issued against New York Casualty Company in suit of Etienne Dugas against New York Casualty Company, which is hereinabove mentioned." Etienne Dugas appealed from that decree.

The Appellee filed a motion to dismiss the appeal because Maurice J. Hartson, Civil Sheriff of the Parish of Orleans, State of Louisiana, did not join therein, and there were no summons and severance as to him. Hartson in no way resisted the supplemental bill, and it is quite apparent that he has no legal interest in maintaining or reversing the decree appealed from. This being so, he was not a necessary party to the appeal. Amadeo v. Northern Assurance Co., 201 U. S. 194; Basket v. Hassell, 107 U. S. 602; National Surety Co. v. LeFlore County, Miss., 262 Fed. §25; Orleans-Kenner Electric Ry. Co. v. Dunbar, 218 Fed. 344; 3 C. J. 1017. The motion to dismiss the appeal is denied.

[fol. 125] The proceeding instituted by the supplementary petition was ancillary to the original interpleader suit, the object sought being the effectuation of the final decree rendered in that suit. That proceeding being ancillary and dependent, the court had jurisdiction by reason of its jurisdiction of the interpleader suit. That proceeding was maintainable without regard to the citizenship of the parties or the amount involved, and the court in that proceeding, acting to enforce or protect its decree in the interpleader suit, was empowered, notwithstanding the statute forbidding, except in specified cases, the Federal courts by injunction to stay proceedings in any court of a State, to stay suits and proceedings in State Courts which would have the effect of defeating or interfering with the court's jurisdiction. Local Loan Co. v. Hunt, 292 U. S. 234; Root v. Woolworth, 150 U. S. 400; Wilson v. Alexander, 276 Fed. 875. The manifest purpose of the final decree rendered in the interpleader suit was to grant the relief authorized by the statute providing for such suits (28 U. S. C. A. § 41 (26), by adjudging that appellee has, by the deposit of $20,000.00 made in that cause, complied with all its obligations under or on account of said qualifying bond, and that appellee be discharged from further liability to the appellant and other parties defendant to that suit. The final decree rendered in the interpleader suit established and concluded the right of the appellee to be discharged from all further liability under the qualifying bond upon which it was the surety, and to terminate any right of the appellant to enforce against the appellee any asserted liability based upon or growing out of that bond. The right established in favor of the appellee is inconsistent with appellant having

the right to enforce against the New York Casualty Company, the surety on the appeal bond given in the suit in which judgment was rendered against appellee for the full amount of appellant's claim for workman's compensation, with the result enabling the New York Casualty Company [fol. 126] to charge the appellee, its principal, with liability for the amount adjudged against the surety. That appeal bond was an incident of the suit brought by appellant against appellee for the full amount of the former's claim, and was a means of effecting the enforcement of that claim. The liability under that appeal bond was a liability on account of the qualifying bond, within the meaning of the provision of the decree in the interpleader suit releasing and discharging the appellee from any and all further liability on account of the qualifying bond. The decree in the interpleader suit had the effect of extinguishing appellee's liability on the appeal bond given in the suit the further prosecution of which was enjoined. The liability of the surety on that appeal bond was extinguished by the discharge of the principal from all liability thereon. Cage's Executors v. Cassidy, 23 How. 109, 116; United States v. Chouteau, 102 U. S. 603; Veach v. Rice, 131 U. S. 293. The court's determination of the effect of its decree in the interpleader suit cannot be controlled by a decision of the Supreme Court of Louisiana in a litigation which arose after that decree was rendered. It would be unconscionable to permit the enforcement of the asserted liability of the surety on the appeal bond in question after the principal in that bond had been discharged from all liability on that bond. A conclusion of law made by the Court stated: "The attempt to collect from the surety on said appeal bond is an indirect method of proceeding against the principal on said bond, American Surety Company, of New York, which it was the intention and purpose of the order and decree herein of September 19, 1932, to forbid." It was appropriate for the court to prevent the full enjoyment by a beneficiary of its final decree of the right established by that decree in favor of such beneficiary from being interfered with or impaired by the prosecution of a suit against the beneficiary's surety to enforce [fol. 127] an asserted liability of the surety, which was extinguished by the discharge of the beneficiary's liability.

The decree appealed from did not go beyond giving due effect to the final decree rendered in the interpleader suit, by protecting the rights of the appellee established by that final decree, and preventing the jurisdiction exercised by the court in rendering that final decree from being defeated or interfered with. The decree under review is

Affirmed.

SIBLEY, Circuit Judge, Dissenting:

I agree that this appeal ought not to be dismissed for want of parties, and that the District Court had dependent jurisdiction to inquire into a violation of its prior injunctive decree. I think it erred in holding that the suit of Dugas against New York Casualty Company on the State court appeal bond is any violation of that decree. The decree is that American Surety Company by paying into court $20,000 had "complied with all its obligations under its bond dated Feb. 12, 1930, as surety for Lumbermen's Reciprocal Association or any *similar previous* bond", and "that all defendants be and they are hereby perpetually restrained and enjoined from instituting or prosecuting in any State court or any other federal court any suit against American Surety Company on account of any right or claim growing out of *said bond* or any *similar previous bond.*" The injunction does not cover a suit on the *subsequent* appeal bond which American Surety Company had given as principal, with New York Casualty Company as surety. Such a bond is altogether dissimilar from the bonds mentioned in the decree. Dugas had pleaded the pendency of his appeal secured by New York Casualty Company's bond as a bar to the interpleader sought by the American Surety Company, but he did not [fol. 128] seek to establish in that suit his rights under that bond, New York Casualty Company being no party to the interpleader. The court properly held that the matter he pleaded was no bar, and that interpleader was proper, and ordered all claimants to set up their claims against the $20,000 bond. Dugas rightly interpreted this as excluding from consideration his claim on this appeal bond, and he proceeded as he should have done for the protection of the surety on that bond to realize whatever was realizable as a general claimant from the fund before the court, and

he collected $1141.21. This he credited on the liability under the appeal bond, and then in a State court sued the surety, New York Casualty Company, for the balance of his claim, alleging that the bringing of the interpleader suit was an abandonment of the appeal pending in the State court and a breach of the appeal bond. The New York Casualty Company got a judgment in the trial court that its bond had not yet been breached and that the suit was premature. On appeal the Supreme Court of Louisiana carefully interpreted the bond of the New York Casualty Company and the State statute under which it was given, and held that the bond was breached and that a cause of action on it had arisen. Dugas vs. New York Casualty Co., — La. —, 159 So. 572. At this point the American Surety Company, which is no party to the litigation in the State court, obtained in the federal court the supplementary injunction under review.

The Supreme Court of Louisiana said in part:

"The United States court did not in its decree undertake to destroy or limit Dugas' right of action against New York Casualty Company as surety on the appeal bond which was given to suspend the execution and to secure the payment of the judgment rendered by the District Court for the Parish of Orleans. We must bear in mind that this suit is not founded on the qualifying bond of $20,000 which the American Surety Company signed as surety [fol. 129] for Lumbermen's Reciprocal Association, but is founded upon the suspensive appeal bond for $10,000 which the New York Casualty Company signed as surety for the American Surety Company. The $20,000 qualifying bond passed out of the case when the American Surety Company abandoned its appeal in that suit on that bond, and thereby rendered the New York Casualty Company liable as surety on the $10,000 appeal bond". * * * "It is true that if the New York Casualty Company has to pay, and if the American Surety Company has to reimburse the New York Casualty Company, the American Surety Company will have paid out more than the amount of the $20,000 qualifying bond. But that happened in Mrs. Brim's case and in the Lyon Lumber Company case, (American Surety Co. vs. Brim, et al, 176 La. 867, 147 So. 18), as a consequence of the failure of the American Surety Company to provoke an interpleader suit until plaintiff in each of those

cases had obtained a final judgment against the American Surety Company (on suspensive appeal); and by the same token it may happen in this case."

The construction and effect of this appeal bond and the State statute under which it was given are settled for the federal courts by the decision of the Supreme Court of Louisiana. The effect of the federal injunctive decree is not thus settled, but I think the holding just quoted is correct. Had American Surety Company when Dugas obtained judgment against it at once filed its interpleader, all its obligations to Dugas would have been ended. But it saw fit to appeal, and to arrest execution of the general judgment against it by giving another obligation for its payment. The consideration of the appeal bond was the delay to be obtained. That consideration was enjoyed, and [fol. 130] the bond as a collateral obligation stands good according to its terms. According to those terms the bond has been breached, and the liability on it has become absolute. The full penalty of $10,000 is not recoverable, but only the unpaid balance of the judgment. For that purpose only is the judgment involved in the action on the bond. The judgment, which indeed represents a liability on the $20,000 bond, is not thereby enforced, but is used only to measure the damages occasioned by the breaching of the $10,000 bond. Limiting the liability on the $20,000 bond has no effect to limit the liability on the $10,000 bond which is otherwise conditioned. It is very clear to me that such a suspensive appeal bond would stand good as a security if an appellant corporation should, pending appeal, go into bankruptcy; or be dissolved; or if, being a shipowner, it should begin limitation of liability proceedings under the federal statute. Such a thing has happened here. If American Surety Company instead of giving this bond, had in order to obtain the delay pledged its property to Dugas, the pledge would surely stand good. American Surety Companyy would in that case lose additionally this property, but only because it had pledged it. It loses no more by reason of the surety's probable right of recourse if this bond is enforced against New York Casualty Company. The bond is the price of a delay which was enjoyed. I think the District Court erred in interfering with its enforcement in the State court.

[fol. 131] JUDGMENT

Extract from the Minutes of April 9th, 1936

No. 7961

ETIENNE DUGAS

versus

AMERICAN SURETY COMPANY OF NEW YORK

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appelant, Etienne Dugas, and the surety on the appeal bond herein, Globe Indemnity Company, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

"Sibley, Circuit Judge, dissenting."

[fol. 132] MOTION AND ORDER EXTENDING TIME TO FILE REHEARING—Filed April 29th, 1936

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7961

ETIENNE DUGAS, Appellant,

versus

AMERICAN SURETY COMPANY OF NEW YORK, Appellee

On motion of I. E. Uzzo and James J. Landry, herein appearing on behalf of the appellant in the above numbered and entitled cause, and on suggestion to the court that mover has through April 30th, 1935, within which to file

his application for rehearing and brief. That it would be impossible to file said application and brief within the time above specified and that mover desires a five days' extension of time within which to file same.

It is ordered by the court that mover be granted an extension of five days, as time in which to file his application for a rehearing and brief, herein.

New Orleans, April 29th, 1936.

(Signed) Rufus E. Foster, United States Circuit Judge. (Signed) I. E. Uzzo & James J. Landry, Attys. for Appellant.

[fol. 133] ORDER DENYING REHEARING

Extract from the Minutes of June 5th, 1936

No. 7961

ETIENNE DUGAS

versus

AMERICAN SURETY COMPANY OF NEW YORK

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 134] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 118 to 137 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 7961, wherein Etienne Dugas is appellant, and American Surety Company of New York is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 117 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 27th day of August, A. D. 1936.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 135] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 19, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

SEP 3 1936

CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 340

ETIENNE DUGAS,

Petitioner,

versus

AMERICAN SURETY COMPANY OF NEW YORK,

Respondent.

PETITION OF ETIENNE DUGAS FOR WRIT OF CERTIORARI

and

BRIEF IN SUPPORT OF PETITION.

M. C. SCHARFF,
Attorney for Petitioner;

JAMES J. LANDRY,
IGNATIUS E. UZZO,
WILLIAM C. ORCHARD,
Of Counsel for Petitioner.

Montgomery-Andree Printing Co., Inc., 430-32 Chartres, N. O. La.

SUBJECT INDEX

	Page
Petition for Writ of Certiorari	1-10
Affidavit of Counsel	11
Certificate of Counsel	12
Brief in Support of Petition for Certiorari	13-29
Opinions Below	13
Jurisdiction of Court	13
Statement of the Case	13
Specifications of Error	13
ARGUMENT	15-29

AUTHORITIES CITED

Baldwin v. Gordon, et al., 12 Martin O. S. 378 (La.)	25
Dugas v. New York Casualty Company, 181 La. 322, 159 So. 572	15, 17, 20-23, 27-28

STATUTES CITED

Article 575, Code of Practice of Louisiana	18
Article 579, Code of Practice of Louisiana	19

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. _____

ETIENNE DUGAS,

Petitioner,

versus

AMERICAN SURETY COMPANY OF NEW YORK,

Respondent.

PETITION OF ETIENNE DUGAS FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable the Supreme Court of the United States:

Now comes Etienne Dugas, a citizen of the United States, residing in the Parish of Iberia, State of Louisiana, and respectfully petitions this Honorable Court to grant a Writ of Certiorari to the Circuit Court of Appeals for the Fifth Circuit, to remove therefrom, for review here, the record in the cause therein pending, numbered No. 7961,

wherein petitioner is the appellant, and respondent, the appellee, and shows:

I.

Petitioner had a claim for Workmen's Compensation insurance against the Lumbermen's Reciprocal Association, a Texas corporation doing business in Louisiana, which corporation had furnished a Twenty Thousand ($20,000.00) Dollar Bond required by the Law of Louisiana of foreign insurance companies for the privilege of doing business in Louisiana. The American Surety Company of New York was the surety on this bond. (R. 2)

II.

After the Lumbermen's Association had gone into the hands of the receiver, petitioner sued the American Surety Company in the State Court and obtained a judgment against the said Surety Company for Twenty ($20.00) Dollars per week during his disability, not to exceed Three (300) Hundred weeks, commencing on May 15, 1930, and for Two Hundred Fifty ($250.00) Dollars for medical bills. In the same judgment, the American Surety Company obtained a similar judgment against the Lumbermen's Association and its receiver. This judgment was signed on April 20, 1931. (R. 14 to 16)

III.

The American Surety Company took a suspensive appeal from the judgment of petitioner to the State Appellate Court in order to suspend and prevent the execution of petitioner's judgment and filed an appeal bond for Ten

Thousand ($10,000.00) Dollars with themselves as principal and the New York Casualty Company as surety, which appeal bond was conditioned in accordance with a Louisiana statute that the Surety Company should prosecute diligently its appeal and should satisfy whatever judgment rendered against it out of its estate, real or personal, otherwise that the surety, New York Casualty Company, should be liable in its place. (R. 16, 17).

IV.

The record was promptly filed in the State Appellate Court and before hearing by the State Court on the appeal, the respondent filed in the United States District Court for the Eastern District of Louisiana an interpleader suit, entitled "American Surety Company of New York v. Etienne Dugas, et al," depositing the amount of the qualifying bond, Twenty Thousand ($20,000.00) Dollars, and cited Dugas and many other defendants having claims against the American Surety Company by virtue of the qualifying bond it had signed for the Lumbermen's Association. (R. 2 to 11)

V.

Thereafter, on September 19, 1932, the District Court rendered a decree in accordance with the bill of respondent, declaring that the respondent had discharged in full its obligation under the Twenty Thousand ($20,000.00) Dollar qualifying bond and enjoined petitioner and the other defendants from taking any further proceedings against the respondent on account of this bond. (R. 32).

VI.

Petitioner was allowed, in the decree, a total sum of Four Thousand One Hundred Sixty and 68/100 ($4,160.68) Dollars which was computed by the Special Master, as follows: Twenty ($20.00) Dollars per week for One Hundred Twenty-seven (127) weeks, that is, from May 15, 1930, to the date of the first hearing before the Master, and Eight ($8.00) Dollars per week (40 per cent disability) for the remaining One Hundred Seventy-three weeks, being One Thousand Two Hundred Seventy-three and 28/100 ($1,273.28) Dollars (discounted at 8 per cent) plus Two Hundred Fifty ($250.00) Dollars for medical fees and Ninety-seven and 50/100 ($97.50) Dollars costs. (R. 34, 35).

VII.

Petitioner received from the pro rata distribution in the interpleader suit, One Thousand One Hundred Forty-one and 29/100 ($1,141.29) Dollars, leaving unpaid Three Thousand Nineteen and 39/100 ($3,019.39) Dollars of the amount fixed and recognized by the decree affirming the Special Master's report. (R. 36).

VIII.

Petitioner made demand for this balance upon the New York Casualty Company as surety on the State Court appeal bond of Ten Thousand ($10,000.00) Dollars. The New York Casualty Company denied liability and petitioner brought suit in the State Court against the said New York Casualty Company for the balance due of Three Thousand Nineteen and 39/100 ($3,019.39) Dollars, which was

later reduced to Two Thousand Nine Hundred Ninety-nine ($2,999.00) Dollars through the filing of a supplemental petition which was filed in order to avoid a removal of the suit to the Federal Court. (R. 58).

IX.

The New York Casualty Company, the only defendant in the suit referred to in paragraph VIII, filed in the State Court, pleas of prematurity, vagueness, estoppel and of no cause or right of action. The judge of the State Court of original jurisdiction, after hearing, sustained the plea of prematurity without passing upon the other pleas. (R. 58).

X.

Petitioner thereupon appealed to the Supreme Court of Louisiana, where, after due and thorough hearing, rendered an opinion and decree reversing the judgment of the lower State Court and remanding the case for further proceedings consistent with the views expressed in their opinion. This opinion set forth the obligation of both respondent and the New York Casualty Company under the statutory appeal bond and fully interpreted the Louisiana Statutes relating to appeal bonds. (R. 56 to 66).

XI.

The New York Casualty Company applied to the Supreme Court of Louisiana for a rehearing which was refused. (R. 66, 68).

XII.

During the pendency of the application of the New York Casualty Company for a rehearing in the State Su-

preme Court, respondent filed in the United States District Court a self styled "supplemental bill in aid of and to effectuate the original decree of this (United States District) Court, in this matter, dated September 19, 1932" which bill is the basis of the present action and which bill prayed that petitioner be enjoined from proceeding further in his suit in the State Court against the New York Casualty Company as surety upon the State Court Appeal Bond. (R. 68 to 78).

XIII.

Petitioner, on February 6, 1935, filed pleas to the jurisdiction (R. 79) and in the alternative, a plea that the District Court was without right to enjoin State Court Suit (R. 84) and a further plea of no right or cause of action on the part of the Surety Company (R. 89) and further after reserving the rights to said pleas or motions to dismiss and answer to the bill (R. 92).

XIV.

Thereafter, on February 13, 1935, after hearing on all pleas, the District Judge overruled all pleas and granted a preliminary injunction (R. 98) to all of which actions, proper bills of exceptions were reserved. (R. 82, 88, 91, 99).

XV.

By stipulation (R. 100) the matter was submitted on the merits on the same pleadings and evidence had and produced on the application for preliminary injunction and subject to the bills of exceptions of petitioner, and on February 25, 1935, a permanent injunction was granted (R.

101) and thereafter the District Judge on March 4, 1935, filed his "Findings of Fact and Conclusions of Law". (R. 103).

XVI.

Petitioner applied to the Circuit Court of Appeals for the Fifth Circuit on May 23, 1935, (R. 107) assigning as error the overrulings of his pleas to the jurisdiction, to the right of the Federal Court to enjoin the proceeding in the State Court, and of no right or cause of action by the respondent, and finally to the granting of the preliminary and permanent injunctions (R. 108, et seq.).

XVII.

The appeal was heard on February 27, 1936, by the Circuit Court of Appeals and on April 9th, 1936, the said Court affirmed the decree of the District Court, with Sibley, Circuit Judge, dissenting. (R. 119). Petition for rehearing was seasonably filed and rehearing denied on June 5, 1936. (R. 137).

XVIII.

The Circuit Court of Appeals affirmed the judgment of the District Court on the grounds that the supplemental bill was in aid of the enforcement of the original decree of September 19, 1932; that the liability on the appeal bond was a liability on account of the qualifying bond within the meaning of the provisions of the original decree in the interpleader suit, and that the attempt to collect from the surety on the appeal bond was an indirect attempt to proceed against the principal, respondent and appellee here.

XIX.

Petitioner avers the decision of the Circuit Court of Appeals is erroneous and that this Court should require the record in this case to be sent up for its review and determination according to the provisions of Title 28, Section 347, United States Code.

XX.

Petitioner avers that the Circuit Court of Appeals erred in holding the supplemental bill was ancillary to the original interpleader suit.

XXI.

Petitioner avers that the Circuit Court erred in holding that the appeal bond was an incident of the suit brought by petitioner against respondent for the full amount of petitioner's claim and that the liability on the appeal bond was a liability on account of the qualifying bond, whereas the judgment of the State Court was not limited to the qualifying bond but was against all property of respondent-appellee, and the appeal bond was a new, separate and distinct obligation on the part of respondent-appellee conditioned that it should prosecute the appeal or the surety be held liable in its place.

XXII.

Petitioner further avers that the Circuit Court of Appeals erred in refusing to follow the law of Louisiana as decided by the Supreme Court of Louisiana, in case No. 32,960 of the Supreme Court of Louisiana, entitled "Etienne Dugas vs. New York Casualty Co." (R. 56, *et*

seq.), relative to the nature and obligations of appeal bonds under the statutes of Louisiana and the liability of principal and surety thereunder.

Petitioner further alleges that the reasons relied upon for the allowance of this writ are that the opinions and decrees of the District Court for the Eastern District of Louisiana and the Circuit Court of Appeals for the Fifth Circuit, handed down herein, have decided an important question of local law in a way in conflict with applicable local decisions and have decided an important question of general law in a way untenable and in conflict with the weight of authority.

XXIII.

Your petitioner, therefore, respectfully submits that these questions of important local and general law should be finally and authoritatively adjudged by this Court upon and after a full presentation to the Court of the merits of said questions on the part of petitioner and respondent.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding the said Court to certify and send this Court a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case herein, numbered 7961, entitled "Etienne Dugas vs. American Surety Company of New York" to the end that said case may be reviewed and determined by this Court as provided in Section 347, Title 28, United States Code, or that your peti-

tioner may have such other or further relief or remedy in the premises as this Honorable Court may deem appropriate and in conformity with law, and that the judgment of the said Circuit Court of Appeals be reversed by this Honorable Court.

And your petitioner will ever pray.

M. C. SCHARFF,
Attorney for Petitioner.

JAMES J. LANDRY,
IGNATIUS E. UZZO,
WILLIAM C. ORCHARD,
Of Counsel for Petitioner.

AFFIDAVIT.

STATE OF LOUISIANA }
PARISH OF ORLEANS }

Personally came and appeared before me, the undersigned Notary Public, duly commissioned and qualified in and for the Parish of Orleans, State of Louisiana, JAMES J. LANDRY, who after being duly sworn deposes and says:

That the petitioner, Etienne Dugas, is absent from the City of New Orleans and it is not convenient for him to make this affidavit; that your affiant has been one of the attorneys for petitioner in his litigation with the American Surety Company of New York and the New York Casualty Company since the inception of the litigation; that he is personally familiar with and has knowledge of all the facts and allegations set forth in this petition and that the same are true and correct.

JAMES J. LANDRY.

Sworn to and subscribed before me,
this 31 day of August, 1936.

CHARLES W. KEHL,
Notary Public.
(Seal)

CERTIFICATE.

I, M. C. Scharff, attorney for Etienne Dugas, petitioner herein, do hereby certify that, in my opinion, the application for the Writ of Certiorari is well founded in Law and is not filed for the purpose of delay.

M. C. SCHARFF.

New Orleans, Louisiana,
August 31, 1936.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

May It Please the Court:

Opinions Below.

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit is reported at page 953 of the 82 Federal, Second Series.

The findings of fact and conclusions of law of the United States District Court for the Eastern District of Louisiana appear at pages 103 to 107 of this Record.

Jurisdiction.

This application to this Honorable Court for a writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit is made under the provisions of Section 347, Title 28 of the United States Code.

Statement of the Case.

The case is fully and completely stated in petitioner's accompanying petition for a writ of certiorari and in the opinion of the Circuit Court of Appeals at pages 119 to 124 of the record, both inclusive. As a certain part of the case must be stated in the argument, we will make no further statement here.

Specifications of Error.

1. That said Circuit Court of Appeals erred in holding that the supplemental proceedings herein were ancillary to the original interpleader suit and thus within the jurisdiction of the District Court.

2. That the said Circuit Court of Appeals erred in holding that the right established in favor of respondent was inconsistent with petitioner's right to enforce against the surety on the state court appeal bond his judgment against respondent on petitioner's claim for workman's compensation.

3. That the said Circuit Court of Appeals erred in holding that the appeal bond was an incident of the suit brought by petitioner against respondent for the full amount of his claim and was a means of effecting the enforcement of that claim.

4. That the said Circuit Court of Appeals erred in holding the liability under the appeal bond was a liability on account of the qualifying bond and that it came within the scope of the decree discharging respondent from all liability on the qualifying bond.

5. That the said Circuit Court of Appeals erred in holding that the proceeding against the surety on the appeal bond was an indirect method of proceeding against respondent on the qualifying bond.

6. That the said Circuit Court of Appeals erred in holding that the decree of the District Court did not go beyond giving due effect to the final decree in the interpleader suit.

ARGUMENT.

The opinion of the Supreme Court of Louisiana in the very suit enjoined by the decree in this proceeding and here complained of, namely, the case of *Etienne Dugas v. New York Casualty Co.*, reported in the *181 La., p. 322, 159 So. 572*, R. pp. 56-66, and the dissenting opinion in the Circuit Court of Appeals in this case by Hon. S. H. Sibley, Circuit Judge, set out herein in the record at pages 127-130, fully cover the contentions of petitioner and his argument thereon and correctly stated the correct principles of law applicable to this case.

The sole question to be decided here is whether the suit by petitioner against the New York Casualty Company on the State court appeal bond executed by respondent is a violation of the prior decree of the District Court in the original interpleader suit of respondent on the $20,000 qualifying bond.

It may be stated at the outset that the New York Casualty Company is not and has never been a party to either the original interpleader suit or the so-called supplemental proceeding.

The suit by petitioner against the New York Casualty Company is based on the following cause of action. Before the American Surety Company filed the original interpleader suit in the Federal District Court, petitioner had obtained a money judgment against the American Surety Company on his workman's compensation claim. This judgment was not limited to the qualifying bond, the

basis of the interpleader suit, but was a general judgment against all of the property of respondent. After the obtaining of this judgment by petitioner in the State Court against respondent, respondent did not at once attempt to invoke the remedy of an interpleader suit. On the contrary, they sought to delay and prevent the enforcement by petitioner of his general judgment against all of the property of respondent. This was accomplished by executing, furnishing and filing a suspensive appeal bond, in accordance with the statutory provisions of Louisiana law, with the New York Casualty Company as surety on the appeal bond, in connection with the appeal of the American Surety Company.

Before the appeal was heard by the Louisiana court of appeals, respondent filed the original interpleader suit, citing petitioner with numerous other claimants and depositing in Court $20,000 to cover its obligations under the qualifying bond of the Lumbermen's Association. Petitioner objected to his inclusion in the interpleader suit but his objections were overruled by the District Court. As petitioner interpreted this decision as not affecting his rights under the appeal bond, he proved his claim in the interpleader suit in order to minimize the damages of the New York Casualty on the state court appeal bond. Petitioner collected his pro rata share of the distribution in the interpleader suit. In the final decree in the interpleader suit petitioner was enjoined "from instituting or prosecuting in any State Court, or in any other Federal Court, any suit against said American Surety Company of New York on account of any right or claim growing out of said bond, or any similar previous bond. (R. 32-33).

Petitioner then brought suit in the State Court against the New York Casualty Company as surety on the appeal bond for the balance due on his claim as found by the Master in the Federal Court. His demand was later remitted to $2999.00 to forestall removal proceedings. Petitioner brought this suit on the grounds that the filing of the interpleader suit was an abandonment of the appeal and a breach of the appeal bond. This action was approved by the decision of the Louisiana Supreme Court in *Dugas v. N. Y. Casualty Co., supra.*

The New York Casualty Company filed in the State Court exceptions of prematurity, vagueness, estoppel by reason of the Federal interpleader proceedings and of no right or cause of action. The trial Court sustained the plea of prematurity, not passing on the other questions raised. On appeal by petitioner to the Supreme Court of Louisiana, the decision of the lower Court was reversed and the case remanded. The New York Casualty Company applied for a rehearing of this decision which was denied. However, before the denial of the rehearing, respondent filed its so-called supplemental bill in the Federal District Court to enjoin petitioner from proceeding against the New York Casualty Company in h[illegible] State Court suit on the appeal bond. Respondent objected to the jurisdiction of the District Court, filed pleas of estoppel and of no right or cause of action. All were overruled and a preliminary and permanent injunction granted in regular course enjoining petitioner from prosecuting his suit in the State Court against the New York Casualty Company as surety on the appeal bond. Judgment was affirmed by

the Circuit Court of Appeals, Sibley, Circuit Judge, dissenting.

The so-called supplemental bill and proceedings herein were not ancillary to the original interpleader suit and was thus not within the jurisdiction of the District Court. It is the contention of petitioner that his suit against the New York Casualty Company as surety on the state court appeal bond was dissimilar from any action or proceedings on the bond or bonds covered by the interpleader decree.

Undoubtedly, the Federal District Court has the right to inquire into a possible violation of its prior injunctive decree in the interpleader suit, but petitioner's suit against the New York Casualty Company on the state court appeal bond was a proceeding based upon a new, separate and distinct obligation from the qualifying bond in the interpleader suit.

Let us consider the Louisiana statutes under which the appeal bond was furnished and the interpretations of those statutes and of the rights and obligations of the parties affected by the appeal bond. The decision of the Louisiana Supreme Court in the very suit enjoined herein, cited above, fully construes the operation and effect of these statutes governing suspensive appeal bonds.

Article 575, Code of Practice of Louisiana, provides:

> "If the appeal has been taken within ten days, not including Sundays, after the judgment has been notified to the party cast in the suit - - - it shall stay execution and all further proceedings,

> until definitive judgment be rendered on the appeal, provided the appellant gives his obligation, with good and solvent security, - - - as security for the payment of the amount of such judgment in case the same is affirmed by the Court to which the appeal is taken."

The judgment of petitioner was a general judgment against all the property of respondent and was not limited to the qualifying bond. So in order to delay and prevent the execution of petitioner's judgment, respondent took a suspensive appeal under the provisions of the above quoted statute. To obtain the benefits of the stay of execution and proceedings granted by the statute, respondent had to comply with two essential requirements: 1st, the appeal must be taken in ten days and 2nd, an appeal bond had to be given. The appeal bond was not an incident of the suit brought by petitioner, as was held by the majority opinion of the Circuit Court herein, and was not a means of effecting the enforcement of the claim of petitioner. On the contrary, the giving of the appeal bond by respondent was mandatory under the statute to prevent and delay the enforcement of petitioner's claim. Therefore, in order, "to stay execution and all further proceedings, until definitive judgment be rendered on the appeal" respondent as principal and New York Casualty Company executed a new obligation, a new contract in favor of petitioner.

What were the terms of that new contract? The statute setting forth the terms and conditions of the bond is *Article 579 of the Code of Practice of Louisiana*, which reads:

> "In the appeal bond it must set forth in substance, that it is given as surety that the appellant shall

> prosecute his appeal, and that he shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in his appeal, otherwise that the surety shall be liable in his place."

This statute is written into every suspensive appeal bond executed in the Courts of Louisiana. Let us see if respondent and its surety on its appeal bond, executed to prevent the seizure of all its property, complied with the terms and conditions of their statutory appeal bond. Before the hearing on the appeal by the State Court of Appeals, respondent filed his interpleader suit in the Federal District Court. Its surety on the appeal bond was not a party to that proceeding or to any proceeding in the Federal Court. Dugas was ordered to set up his claim against the qualifying bond, but did not in any way seek to establish his rights under the appeal bond as the New York Casualty Company, surety thereon was not a party to the interpleader proceedings.

After the conclusion of the original interpleader suit, petitioner brought suit against New York Casualty Company as surety on the appeal bond on the ground that the filing of the interpleader suit was an abandonment by respondent of its appeal and a breach of the terms and conditions of the appeal bond which rendered the surety liable. This contention was approved in this very case by the Louisiana Supreme Court in *Dugas v. New York Casualty Company, 181 Louisiana 322, 159 Southern 572*, and in record herein at pages 59, 60, 61.

This decision interpreting the statute relating to appeal bonds and the breach of their terms and conditions by the Louisiana Supreme Court settles the question for the Federal Courts.

In that case in an exhaustive and able opinion the Louisiana Supreme Court held in part:

> "The conditions of the appeal bond on which this suit is founded are precisely in accord with the terms prescribed in article 579 of the Code of Practice, viz: 'That it is given as surety that the appellant shall prosecute his appeal, and that he shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in his appeal, otherwise that the surety shall be liable in his place.' The first obligation on the part of an appellant, in order to save the surety from liability on the appeal bond, is 'that the appellant shall prosecute his appeal'. If he prosecutes his appeal, he must also 'satisfy whatever judgment may be rendered against him, * * * otherwise the surety shall be liable in his place'. But the appellant may render the surety liable as well by abandoning his appeal, as by prosecuting the appeal and then failing to satisfy whatever judgment may be rendered against him. It was so decided in Champonier v. Washington, 2 La. Ann. 1013. In that case the appeal was declared abandoned by the failure of the appellant to file the transcript before the expiration of the return day. See Champonier v. Washington, 2 La. Ann. 722. The plaintiff then proceeded against the surety on the appeal bond, and he pleaded that the plaintiff had no right to proceed against him 'because the judgment against Washington, from which the appeal was taken, was not affirmed by this [the Supreme] Court'. The

Court held that, as the appellant had not prosecuted his appeal, but had abandoned it, the obligation for which the surety was liable on the appeal bond was to pay the judgment appealed from. In so deciding the Court said:

> 'Where an appellant abandons his appeal, the surety on the appeal bond cannot exempt himself from responsibility on the ground that "the judgment appealed from has not been affirmed", as contemplated by sec. 20 of the stat. of 20 March, 1839, and arts. 575, 596, of the Code of Practice. Percuriam: The condition of the appeal bond, following literally the requisition of art. 579 of the Code of Practice, was "that the appellant shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him", &c. The appellant did not prosecute his appeal, and the condition of the bond was thus broken.'

That decision was cited with approval in Moore, Janny & Hyams v. Lalaurie, 27 La. Ann. 1013, and in Rowle v. Feltus, 33 La. Ann. 422, and in Russ & Hollingsworth v. Their Creditors, 45 La. Ann. 422, 12 So. 627; in which cases it was held that an appeal bond which did not contain the obligation or condition that the appellant should prosecute his appeal was not a valid appeal bond. To the same effect see the editorial note to Woodle v. Settlemeyer, L. R. A. 1915 A, p. 845, III, and Ann. Cas. 1916 C, p. 1228.

The American Surety Company in this instance, abandoned the appeal which the company had taken from the judgment of the Civil District Court to the Court of Appeal for the Parish of Orleans, when the Company went into the United States District Court and enjoined Dugas from prosecuting his suit, then pending in the Court of Appeal. It is argued by counsel for the New York Casualty Company that the American Surety Company did not

abandon its appeal, but, on the contrary, satisfied the judgment appealed from, by depositing in the United States District Court the amount of the $20,000 bond on which the suit was founded. That would be true, perhaps, if the judgment which Dugas had obtained against the American Surety Company had been limited in its terms so that he could collect only a proportionate share of the amount of the $20,000 bond on which the suit was brought. But the judgment which Dugas held against the American Surety Company was unqualified in that respect, and was exigible against any property belonging to the company. The judgment was a final judgment, not subject to annulment or amendment except by the Court having appellate jurisdiction. Code of Prac. Art. 539, 565. And the execution or collection of the judgment was prevented only by the suspensive appeal, and on the condition that the appellant, American Surety Company, should prosecute the appeal, and should satisfy whatever judgment might have been rendered against the company, or that the surety on the appeal bond, the New York Casualty Company, should be liable in its place. The expression in the article of the code, 'that the surety shall be liable in his place', means that the surety shall be liable for whatever judgment the principal on the bond shall be liable for; that is, the judgment of the appellate Court if the appellant prosecutes his appeal, or the judgment appealed from if the appellant abandons the appeal. Any other interpretation would render a suspensive appeal bond worthless in the case of an abandonment of an appeal from a money judgment. And any other interpretation would contradict the very language of the bond, 'that the appellant shall prosecute his appeal.' "

The New York Casualty Company's obligation under the bond, according to the decision of the Louisiana

Supreme Court was to see that the American Surety Company prosecuted the appeal in accordance with the statutory terms and conditions of the appeal bond or to pay the amount of the judgment in its place. It was a separate and distinct undertaking from that of the American Surety Company in favor of petitioner. Can courts of equity grant a release from the plain and positive terms of a contract not charged to have been entered into by fraud or violence? And without all of the parties to that contract being made parties to such action? Will they release a party from a solemn and sacred bond whose statutory terms and conditions were well known to the surety and principal thereon and which bond was executed freely and knowingly by the parties thereto in favor of the petitioner, and which bond is the sole and only law between them without reference to any other bond or bonds?

When the American Surety Company induced the New York Casualty Company to sign as its surety on the appeal bond, it did so with full knowledge of the statutory law of the State and of the effect and purpose of the contract. The appeal bond was voluntary as to the American Surety Company and the New York Casualty Company, but was forced so far as Dugas was concerned, because, whilst the American Surety Company before filing that bond could have either stayed the judgment by paying, or have its interpleader proceeding or have permitted Dugas to levy execution. It chose to prosecute an appeal and by filing of the motion and the bond, which is the subject of this litigation, it chose that course, and when it did, Dugas was forced to accept because he could do noth-

ing except to question the validity of the bond in the proceedings for appeal thereafter.

By the jurisprudence of Louisiana, established in 1822, in a case wherein a litigant proceeded directly against the surety on an appeal bond in *Baldwin v. Gordon, et al., 12 Mart. (O. S.) 378*, Supreme Court of the State of Louisiana passing on a very similar question said:

> "The principal debtors were not excused from carrying up this appeal by the decree in that case. Either the judgment obtained in the first instance against them, was correct, or it was not. If it was correct, they should not have appealed from it. If it was erroneous, they ought to have prosecuted their appeal with effect. And if they failed to do so, they have not only revived that original judgment, but they have made themselves responsible on the new contract, by which they engaged they would reverse the judgment, or satisfy it.
>
> But it is said, that by the order of the district court, the whole of the property belonging to the succession was directed to be sold, and therefore prosecuting the appeal was unnecessary. This conclusion cannot receive our assent. It is true, the placing the property out of the reach of a creditor, who wished to seize upon it to the injury of others, may have been the object for which the defendants appealed. But the object which they had, in appealing, is a quite distinct question, from the rights acquired by the plaintiff under the contract formed by that step. And, although attaining the end they had in view, by a decree in another suit to which the plaintiff was not a party, may have answered their purpose, yet it does not discharge their bond; for the condition of it was not that they would obtain a decree of the district court, but that they would prosecute their appeal with success; and this brings us to the next and last question in the cause, whether the principal

debtor, being placed in a situation in which she cannot make payment, recourse can be had against the surety.

The surety is not entitled to every exception which the principal debtor may urge. He has a right to oppose all which are inherent to the debt, not those which are personal to the debtor. Civil Code, 432, art. 21. Pothier distinguishes them into exceptions in personam, and exceptions in rem. The latter, which go to the contract itself, such as fraud, violence, or whatever entirely avoids the obligations, may be pleaded by the surety; but the former, which are grounded on the insolvency or partial solvency of the debtor, or which result from a cession of his property, or are the consequence of his minority, cannot be opposed to the creditor. Pothier on Obligations, 380, 381. In the case before us, the objection that, since executing this bond, one of the principal debtors has obtained from a court of competent jurisdiction, an order directing a sale of all the property of the succession she represents, and by that means suspending the payment of debts due by it, cannot be distinguished from the case of partial solvency put by the author to whom we have referred."

That theory has been pursued throughout the jurisprudence of this State down to the case of Dugas against the New York Casualty Company, the proceedings which are enjoined herein.

It is difficult to conceive how the principal on the appeal bond was discharged from liability, if any, to the surety on that bond, but even if that be true the conclusion cannot be escaped that Dugas was by that contract deprived of his right to acquire a privilege by levying a seizure on the property of the American Surety Company

and thus be able to recover on his whole claim. The New York Casualty Company knew this, as well as the American Surety Company, and it would seem to be unconscionable to permit now, the American Surety Company to prevent Dugas from enforcing his right under that contract, certainly as against the New York Casualty Company.

The decree of the District Court in the interpleader suit was "that all defendants be and they are hereby perpetually restrained and enjoined from instituting or prosecuting in any State Court or any other Federal Court any suit against the American Surety Company on account of any right or claim growing out of said bond ($20,000 qualifying bond) or any similar previous bond." (Parenthesis ours). As was well said by Judge Sibley in his dissenting opinion, (R. 127) "The injunction does not cover a suit on a subsequent appeal bond which American Surety Company had given as principal, with the New York Casualty Company as surety. Such bond is altogether dissimilar from the bonds mentioned in the decree."

The Supreme Court of Louisiana in the case of *Dugas v. New York Casualty Company, supra*, holds the same opinion. Their finding is quoted with approval by Judge Sibley at page 128-129 of the record, which is as follows:

> "The United States court did not in its decree undertake to destroy or limit Dugas' right of action against New York Casualty Company as surety on the appeal bond which was given to suspend the execution and to secure the payment of the judgment rendered by the District Court for the Parish of Orleans. We must bear in mind that this suit is not founded on the qualifying bond of $20,000 which the American Surety Company signed as

surety for Lumbermen's Reciprocal Association, but is founded upon the suspensive appeal bond for $10,000 which the New York Casualty Company signed as surety for the American Surety Company. The $20,000 qualifying bond passed out of the case when the American Surety Company abandoned its appeal in that suit on that bond, and thereby rendered the New York Casualty Company liable as surety on the $10,000 appeal bond". . . . "It is true that if the New York Casualty Company has to pay, and if the American Surety Company has to reimburse the New York Casualty Company, the American Surety Company will have paid out more than the amount of the $20,000 qualifying bond. But that happened in Mrs. Brim's case and in the Lyon Lumber Company case, (American Surety Co. v. Brim, et al., 176 La. 867, 147 So. 18), as a consequence of the failure of the American Surety Company to provoke an interpleader suit until plaintiff in each of those cases had obtained a final judgment against the American Surety Company (on suspensive appeal); and by the same token it may happen in this case."

The whole situation is aptly and correctly summarized by Judge Sibley in his dissenting opinion at pages 129-130 of the Record, as follows:

"Had American Surety Company when Dugas obtained judgment against it at once filed its interpleader, all its obligations to Dugas would have been ended. But it saw fit to appeal, and to arrest execution of the general judgment against it by giving another obligation for its payment. The consideration of the appeal bond was the delay to be obtained. That consideration was enjoyed, and the bond as a collateral obligation stands good according to its terms. According to those terms the bond has been breached, and the liability on it has become absolute."

The Circuit Court of Appeals quotes with approval a conclusion of law by the District Court that the attempt to collect from the surety on the state court appeal bond is an indirect method of proceeding against the principal on said bond. From the undisputed facts in this case, can not the belated attempt to absolve the New York Casualty Company by the New York Surety Company through its self-styled supplemental bill, be termed an indirect attempt to defeat a fair and well considered judgment of the state court having jurisdiction of the subject matter, and to rectify their failure and laches to properly exercise their remedy of interpleader at the proper time.

We cannot find a better conclusion than that of Judge Sibley (R. 130) **"The bond is the price of a delay which was enjoyed.** I think the District Court erred in interfering with its enforcement in the State Court."

WHEREFORE, petitioner prays, That his petition for a writ of certiorari, directed to the United States Circuit Court of Appeals for the Fifth Circuit be granted, and that after a full hearing on the merits, the judgment of the Circuit Court of Appeals be reversed.

And for all necessary and appropriate relief in the premises.

Respectfully submitted,

M. C. SCHARFF,
JAMES J. LANDRY,
IGNATIUS E. UZZO,
WILLIAM C. ORCHARD,
Counsel for Petitioner.

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CHARLES ELMORE CROP
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 340

ETIENNE DUGAS

versus

AMERICAN SURETY COMPANY OF NEW YORK.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

ORIGINAL BRIEF ON BEHALF OF AMERICAN SURETY COMPANY OF NEW YORK, RESPONDENT.

VICTOR LEOVY,
HENRY H. CHAFFE,
HARRY McCALL,
JAS. HY. BRUNS,
Attorneys for American Surety Company of New York, Appellee.

New Orleans,
January 9, 1937.

Montgomery-Andree Printing Co., Inc., 430-32 Chartres, N. O. La.

SUBJECT INDEX

	Pages
Statement of Case	1-10
Argument on Motion to Dismiss	11-14
Argument on the Merits	15-36
Specification of Error No. 1	15-29
Specification of Error No. 2	29-31
Specification of Error No. 3	31-32
Specification of Error No. 4	32-33
Specification of Error No. 5	34
Specification of Error No. 6	34-35
Final Conclusion	35-37

TABLE OF AUTHORITIES CITED

(a) cases:

Aetna Life Insurance Co. v. Middleport, 124 U. S. 534	31
Amadeo v. Northern Assurance Co., 201 U. S. 194	14
Basket v. Hassell, 107 U. S. 602	14
Baush Machine Tool Company v. Aluminum Company of America, 63 Fed. (2d) 778	27
Beardsley v. Arkansas & Louisiana Railway Company, 158 U. S. 123	13
Brewster v. Wakefield, 22 Howard 118	12
Brown v. Staples, 138 La. 602	31
City Bank v. Hunter, 129 U. S. 557	14
Clifton v. Sheldon, 23 Howard 481	12
Davis v. Mercantile Trust Company, 152 U. S. 590	13
Dolan v. Jennings, 139 U. S. 385	12
Dugas v. American Surety Company of New York, 82 Fed. (2d) 953	10
Dugas v. New York Casualty Company, 181 La. 322	9
Elliot v. Lombard, 292 U. S. 139	13
Estis v. Trabue, 128 U. S. 225	12

TABLE OF AUTHORITIES CITED—(Continued)

(a) cases: (continued) Pages

Fiebelman v. Packard, 108 U. S. 14 12
Forgay v. Conrad, 6 Howard 201 12
Garcia v. Vela, 216 U. S. 598 13
Gilfillan v. McKee, 159 U. S. 303 13
Hanrick v. Patrick, 119 U. S. 156 12
Hampton v. Rouse, 13 Wallace 187 12
Hardee v. Wilson, 146 U. S. 179 13
Hartford Accident and Indemnity Company v. Bunn, 285 U. S. 169 13
Healey Ice Machine Company v. Green, 184 Fed. 515 27
Henningsen v. United States Fidelity & Guaranty Co., 209 U. S. 404 31
Hickey v. Johnson, 9 Fed. (2d) 498 27
Inglehart v. Stansbury, 151 U. S. 68 13
Lamb v. Cramer, 285 U. S. 217 27
Lamb v. Schmitt, 285 U. S. 222 27
Langnes v. Green, 282 U. S. 531, 535-9 11
Local Loan Company v. Hunt, 292 U. S. 234 26
Martel v. Rovira, 164 La. 1099 31
Mason v. United States, 136 U. S. 581 12
Mussina v. Cavazos, 6 Wallace 355 12
Masterson v. Herndon, 10 Wallace 416 11
McCabe v. Guaranty Trust Company of New York, 243 Fed. 845 27
McCutchen v. Union Trust Company, 271 Fed. 586 24
Osage Oil & Refining Company v. Continental Oil Company, 34 Fed. (2d) 585 27
Owings v. Kincannon, 7 Peters 399 12
"Protector", The, 11 Wallace 82 12
Public Service Commission v. Havemeyer, 296 U. S. 506-509 11
Root v. Woolworth, 150 U. S. 401 18
Ross v. Miller, 252 Fed. 697 27

TABLE OF AUTHORITIES CITED—(Continued)

(a) cases: (continued)	Pages
Sand Springs Home v. Title Guarantee & Trust Company, 16 Fed. (2d) 917	27
Shields v. Thomas, 18 Howard 253	27
Simpson v. Greeley, 20 Wallace 152	12
Sipperley v. Smith, 155 U. S. 86	13
Smyth v. Strader, Pevine & Co., 12 How. 327	12
Sterling v. Gredig, 5 Fed. Supp. 329	25
Stelos Company v. Hosiery Motor-Mend Corp., 295 U. S. 237, 239	11
Thompson v. Maxwell, 95 U. S. 391	20
Todd v. Daniel, 16 Peters 521	13
Williams v. the President, Directors and Company of the Bank of the United States, 11 Wheaton 414	12
Wilson v. Alexander, 276 Fed. 875	22
Wilson v. Kiesel, 164 U. S. 248	13
Wilson, the Heirs of, v. Life and Fire Insurance Company of New York, 12 Peters 140	12
Winters v. United States, 207 U. S. 564	13

(b) Statutes:

Louisiana Act No. 172 of 1908	2
Louisiana Civil Code:	
Article 3052	30
" 3053	31
" 2161	31
Federal Interpleader Act of May 8, 1936, 44 Statutes at Large, Chapter 273, page 416	4

(c) Text Books:

Cyclopedia of Federal Procedure, Vol. 4, Sec. 1157, pages 336, et seq.	28
Equity Rules 34 and 35	29
2 Hughes Federal Practice, Sec. 1226, page 394	28
Story's Equity Pleadings, 9th Ed., Chapter 8, pages 292, et seq., also Section 336	27, 28

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 340

ETIENNE DUGAS

versus

AMERICAN SURETY COMPANY OF NEW YORK.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

ORIGINAL BRIEF ON BEHALF OF AMERICAN SURETY COMPANY OF NEW YORK, RESPONDENT.

STATEMENT OF CASE.

The basic question herein presented is whether a surety on an appeal bond can be held liable after a judicial determination, by a court of competent jurisdiction, that the principal on the bond has discharged its full duty to the appellee and owes no more to him. The petitioner herein contends that the answer to this question should be "yes", whereas it is our contention, supported by the judgment

of the district court and that of the United States Circuit Court of Appeals, that the answer should be "no".

An approach to this matter will be facilitated by a chronological statement of the facts, which we shall make as briefly as possible:

On February 12, 1930, the American Surety Company of New York (hereinafter refered to as American), the respondent herein, executed, as surety, a bond for Lumbermen's Reciprocal Association, a Texas insurance company, as principal, in the penal sum of Twenty Thousand Dollars ($20,000.00); said bond being given in order to qualify the insurance company to do business in the State of Louisiana, as required by *Louisiana Act No. 172 of 1908*. A copy of the bond will be found at page . . . of the record. While not an issue in the case, we append in the margin hereof a copy of Act 172 of 1908.* Etienne

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*"ACT NO. 172
AN ACT

Requiring fire, life, accident and other kinds of insurance companies, other than surety and fidelity and fraternal societies, and insurance companies insuring against the breakage of plate glass only organized under the laws of other States, to give a bond payable to the State Treasurer conditioned for the prompt payment of claims arising in this State, and providing penalties for the enforcement of this Act.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That all fire, life, accident and other kinds of insurance companies other than fidelity and surety and fraternal societies and insurance companies in-

Dugas, petitioner herein, worked in Louisiana for an employer carrying a workmen's compensation policy with the Lumbermen's Reciprocal Association. Dugas was hurt in an accident; and, the Lumbermen's Reciprocal Association having gotten into financial difficulties, Dugas brought suit in the Civil District Court for the Parish of Orleans, State of Louisiana, against the American on its qualifying bond (No. 188,642 of the docket of that Court). In said suit he obtained judgment, on April 14, 1931, for compensation at the rate of Twenty Dollars ($20.00) per week, for a period not to exceed three hundred (300) weeks (R. p. 14). From such judgment the American appealed suspensively to the Court of Appeal for the Parish of Orleans and furnished appeal bond in the sum of Ten Thou-

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suring against the breakage of plate glass only organized under the laws of other States, in addition to requirements now prescribed by law, shall, annually give a bond in favor of the State of Louisiana, with at least three good and sufficient sureties, resident of this State, and approved by the State Treasurer, in the full sum of Twenty thousand dollars ($20,000.00), or a bond of a surety company authorized to do business in this State, conditioned for the prompt payment of all claims arising and accuring to any person during the term of said bond by virtue of any policy issued by any such corporation upon the life or person of any citizen of this State, or upon any property situated in this State, and such bond shall be annually renewed, and the old bond will become cancelled by the acceptance of the new bond by the State Treasurer, such acceptance being full authority to the Clerk of Court where the old bond is recorded to make such cancellation on his records. Provided

sand Dollars ($10,000.00) executed by New York Casualty Company as surety (R. p. 16). The said appeal was perfected and the record filed in the said Court of Appeal, but nothing further was done therein for the reasons hereinafter stated. Thereafter, on June 5th, 1931, the American filed its bill of interpleader in the United States District Court for the Eastern District of Louisiana, deposited in the registry of the court the sum of Twenty Thousand Dollars ($20,000.00), being the full penalty of its qualifying bond for the Lumbermen's Reciprocal Association, and called into the said proceeding, as defendants, all Louisiana creditors of the said association, including Etienne Dugas. The jurisdiction of the Federal Court was based on the Federal Interpleader Act of May 8, 1926; *44 Stat. at Large, Chapter 273, p. 416.* The said statute is quoted in the

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that no bond shall be canceled, or withdrawn unless a new bond has been substituted as above provided, or satisfactory evidence has been submitted to the insurance department that the company has discharged all of its obligations and liabilities in this State, and that it has no liabilities whatever outstanding in this State.

Section 2. Be it further enacted, etc., That the requirement of this Act shall not be construed to relieve any insurance company of the several duties now required by law, but the requirement of this Act shall be held to be and are intended to be in addition to the duties and requirements now prescribed by law. Provided that the provisions of this Act shall become effective from and after March 1st, 1909, when present authority of the Companies now in this State will expire."

margin.* An appropriate restraining order was entered and rule was issued requiring the various defendants to show cause why a preliminary injunction should not issue restraining and enjoining them from suing, or taking any steps to sue or doing anything toward the prosecution of any suit or proceeding in any state court or in any other federal court on any claim arising out of or connected with the qualifying bond of February 12, 1930, in question (R. p. 11). Dugas resisted the bill by an exception of no cause of action, plea of estoppel and an answer (R. pp. 19-27). In the plea of estoppel and in the answer he specifically urged the proceeding in the state court, and, more particularly, the taking of an appeal and the furnishing of a suspensive appeal bond as reasons why he should not be

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*An act Authorizing casualty companies, surety companies, insurance companies or associations or fraternal or beneficial societies to file bills of interpleader.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the district courts of the United States shall have original jurisdiction to entertain and determine suits in equity begun by bills of interpleader duly verified, filed by any casualty company, surety company, insurance company or association or fraternal or beneficial society, and averring that one or more persons who are bona fide claimants against such company, association, or society resides or reside within the territorial jurisdiction of said court; that such company, association or society has in its custody or possession money or property of the value of $500 or more, or has issued a bond or a policy of insurance or certificate of membership providing for the payment of $500 or more to the obligee or obligees in such bond or as insurance, indemnity, or benefits to a beneficiary, beneficiaries, or the heirs, next of kin, legal representatives, or assignee

brought into the interpleader proceeding. A preliminary injunction was issued as prayed for on June 25, 1931 (R. p. 31). On June 15, 1932, there was a final hearing as to the rights, duties and obligations of the American, and on September 19, 1932, there was a final decree perpetuating the injunction and holding that the American had complied with all of its obligations under or on account of its qualifying bond and releasing and discharging it from any and all further liability on account of said bond (R. p. 32). The decree then referred the matter to a special master to determine the manner in which the balance of the fund remaining on deposit in the registry of the court should be distributed to the defendants. The special master filed a

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of the person insured or member; that two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property or the penalty of such bond, or to such insurance, indemnity, or benefits; that such company, association, or society has deposited such money or property or has paid the amount of such bond or policy into the registry of the court, there to abide the judgment of the court.

Sec. 2. In all such cases if the policy or certificate is drawn payable to the estate of the insured and has not been assigned in accordance with the terms of the policy or certificate the district court of the district of the residence of the personal representative of the insured shall have jurisdiction of such suit. In case the policy or certificate has been assigned during the life of the insured in accordance with the terms of the policy or certificate, the district court of the district of the residence of the assignee or of his personal representative shall have jurisdiction. In case the policy or certificate is drawn payable to a beneficary or beneficiaries and there has been no such assignment as aforesaid the jurisdiction shall be in the district court of the district in which the beneficiary or beneficiaries

report on April 17, 1933 (R. p. 33). He found the total amount due Dugas to be the sum of $4160.68, but, the claims proved being almost four times the fund available for distribution, the exact *pro rata* share due Dugas was, according to the report, $1141.29. On April 20, 1933, counsel for all claimants, including counsel for Dugas, filed a stipulation acquiescing in the special master's report and waiving the twenty day delay accorded them by Equity Rule No. 66 for the filing of exceptions to the said report, and, on such stipulation, had the District Judge confirm the said report (R. p. 37). No appeal was taken by Dugas from the decree of September 19, 1932, or from the distributive decree of April 30th, 1933.

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or their personal representatives reside. In case there are claimants of such money or property, or in case there are beneficiaries under any such bond or policy resident in more districts than one, then jurisdiction shall be in the district court in any district in which a beneficiary or the personal representative of a claimant or a deceased claimant or beneficiary resides. Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any other Federal court on account of such money or property or on such bond or on such policy or certificate of membership until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

Sec. 3. Said court shall hear and determine the cause and shall discharge the complainant from further

On March 7th, 1934, Dugas brought a new suit in the Civil District Court for the Parish of Orleans, State of Louisiana, No. 206,399 of the docket of the said court, against the New York Casualty Company, the surety on the appeal bond of the American in the original suit in the Civil District Court, in which new suit he claimed $3019.39, being the difference between the amount found due by the special master in the interpleader suit and the distributive sum therein allowed to Dugas and paid to him (R. p. 39). On March 14, 1934, an amended petition was filed reducing the amount claimed to $2999.00 for the purpose of preventing a removal to the federal court (R. p. 44). To this suit the New York Casualty Company filed various exceptions, among others, one of prematurity (R. p. 46). The

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liability; and shall make the injunction permanent and enter all such other orders and decrees as may be suitable and proper, and issue all such customary writs as may be necessary or convenient to carry out and enforce the same.

Sec. 4. Public Act numbered 346, Sixty-fourth Congress, entitled "An Act authorizing insurance companies and fraternal beneficiary societies to file bills of interpleader", approved February 22, 1917, and Public Act numbered 465, Sixty-eighth Congress, entitled "An Act to amend an Act entitled 'An Act authorizing insurance companies or associations and fraternal beneficiary societies to file bills of interpleader', approved February 22, 1917", approved February 25, 1925, be and the same are hereby repealed. Said repeal shall not affect any act done or any right, accruing or accrued in any suit or proceeding had or commenced under said Acts hereby repealed, prior to the passage of this Act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said Acts had not been repealed hereby.

state district court maintained the exception of prematurity and dismissed the suit (R. p. 49). Dugas appealed from that judgment of dismissal to the Supreme Court of the State of Louisiana, which, on January 7, 1935, reversed the judgment of the state district court and remanded the case with an opinion clearly forecasting an unfavorable outcome for the New York Casualty Company. *Dugas v. New York Casualty Company, 181 La. 322,* copied in the Record at p. 56.

On January 29, 1935, the American filed, in the original interpleader proceeding in the United States District Court, a supplemental petition (R. p. 68), in which it averred the happenings above stated since the final decree of September 19, 1932, and set out that if Dugas should be permitted to obtain a judgment in the state court against the New York Casualty Company, the American would, of course, have to reimburse its surety, with the result that Dugas would, in effect, be collecting from the American in the teeth of the decree of the federal district court of September 19, 1932; and, accordingly, in aid of the former decree of the district court, the American asked for an injunction against Dugas specifically restraining him from taking any steps in connection with his suit against the New York Casualty Company, and an injunction against the Civil Sheriff for the Parish of Orleans restraining him from executing any judgment, decree or order that might be entered in the said suit. No restraining order was sought. The matter was heard on application for a

preliminary injunction and such injunction was issued on February 13, 1935 (R. p. 98). Dugas filed various pleadings in opposition to the relief sought, which contained very much the contentions urged by him in opposition to the original interpleader suit (R. pp. 79-98). It being thereafter stipulated that the matter should be submitted for final trial on the record as made up in connection with the application for a preliminary injunction (R. p. 100), a permanent injunction issued on February 25, 1935 (R. p. 101). From such injunction Dugas appealed to the United States Circuit Court of Appeals for the Fifth Circuit, which tribunal, on April 9, 1936, affirmed the judgment of the district court. *Dugas v. American Surety Company of New York, 82 Fed. (2d) 953*, which opinion will be found at page 118 of the record. It is on account of the decree of the Circuit Court of Appeals, affirming the judgment of the District Court of February 25, 1935, that the present application to this Court was made.

In the Circuit Court of Appeals American had filed a motion to dismiss Dugas' appeal because the Civil Sheriff of the Parish of Orleans, against whom the decree of the lower court ran jointly, had not appealed and nothing had been done as to the said Civil Sheriff in the way of summons or severance. The Circuit Court denied the motion to dismiss. From copy of Transcript of Record herein, rereceived by us only on January 8th, 1937, we learn for the first time that copy of motion to dismiss was inadvertently omitted; but that such motion was filed and discussed by the Court in its opinion. We have requested the Clerk of the Circuit Court of Appeals to forward a certified copy of the motion to the Clerk of this Court.

ARGUMENT.

I.

ON MOTION TO DISMISS.

As just hereinabove stated, the American filed a motion in the Circuit Court to dismiss Dugas' appeal, which motion was, by that court, denied. While no cross petition or writ was filed in this court by the American, we understand the practice to be that this court may, nevertheless, consider the motion to dismiss. *Langnes v. Green, 282 U. S. 531, 535-9 (1931); Stelos Company v. Hosiery Motor-Mend Corporation, 295 U. S. 237, 239 (1935); Public Service Commission v. Havemeyer, 296 U. S. 506, 509 (1936).* The propriety of passing on the action of the Circuit Court in denying the motion to dismiss in the present case is accentuated by the fact that the basis of the motion would seem clearly to be jurisdictional.

The decree of the District Court appealed from forbade any action by Dugas toward the prosecution of his suit in the state court against the New York Casualty Company and enjoined the Civil Sheriff for the Parish of Orleans from taking any action toward the carrying out of any decree which might be rendered by the state courts in the said proceeding. Therefore, even if Dugas should succeed in his appeal, the decree of the District Court, long since final, would still remain as against the Civil Sheriff.

In *Masterson v. Herndon, 10 Wallace 416 (1870),* this court announced at pages 416-17:

> "It is the established doctrine of this court that in cases at law, where the judgment is joint, all the

> parties against whom it is rendered must join in the writ of error; and in chancery cases, all the parties against whom a joint decree is rendered must join in the appeal, or they will be dismissed. There are two reasons for this: 1. That the successful party may be at liberty to proceed in the enforcement of his judgment or decree against the parties who do not desire to have it reviewed. 2. That the appellate tribunal shall not be required to decide a second or third time the same question on the same record."

This rule seems first to have been laid down in *Williams v. the President, Directors and Company of the Bank of the United States, 11 Wheaton 414 (1826)*, in which the court spoke through Mr. Chief Justice Marshall. In 1833 the same court, again through the Chief Justice, applied the same rule to a chancery case in *Owings v. Kincannon, 7 Peters 399*. Since that time the current of jurisprudence has proceeded unbroken.

The Heirs of Wilson v. The Life and Fire Ins. Co. of New York, 12 Peters 140, (1838).
Forgay v. Conrad, 6 Howard 201, (1848).
Smyth v. Strader, Pevine & Co., 12 Howard 327, (1851).
Brewster v. Wakefield, 22 Howard 118, (1859).
Clifton v. Sheldon, 23 Howard 481, (1859).
Mussina v. Cavazos, 6 Wallace 355, (1867).
"The Protector", 11 Wallace 82, (1870).
Hampton v. Rouse, 13 Wallace 187, (1871).
Simpson v. Greeley, 20 Wallace 152, (1873).
Fiebelman v. Packard, 108 U. S. 14, (1882).
Hanrick v. Patrick, 119 U. S. 156, (1886).
Estis v. Trabue, 128 U. S. 225, (1888).
Mason v. United States, 136 U. S. 581, (1890).
Dolan v. Jennings, 139 U. S. 385, (1891).

Hardee v. Wilson, 146 U. S. 179, (1892).
Inglehart v. Stansbury, 151 U. S. 68, (1894).
Davis v. Mercantile Trust Company, 152 U. S. 590, (1894).
Sipperley v. Smith, 155 U. S. 86, (1894).
Beardsley v. Arkansas & Louisiana Ry. Co., 158 U. S. 123, (1895).
Gilfillan v. McKee, 159 U. S. 303, (1895).
Wilson v. Kiesel, 164 U. S. 248, (1896).
Garcia v. Vela, 216 U. S. 598, (1910).
Hartford Accident & Indemnity Co. v. Bunn, 285 U. S. 169 (1932).

There have been cases which were held not to fall within the rule. For example, in *Elliot v. Lombard, 292 U. S. 139 (1934)*, it was held that, since the decree was not a joint one, but indeed ran primarily against only the main defendant and secondarily, or conditionally, against the other defendant, whose absence from the appeal was the basis of the motion to dismiss, the main defendant could appeal alone. It will be observed that in the instant case the judgment ran equally against Dugas and the Civil Sheriff, and that here there was a definite final decree against the Civil Sheriff, whereas in *Elliot v. Lombard* the decree against the secondary defendant was only contingent.

Much the same thing was true of *Todd v. Daniel, 16 Peters, 521 (1842).*

Winters v. United States, 207 U. S. 564 (1908) is readily distinguishable, for there the contention was that certain defendants, against whom a decree *pro confesso* had been taken, were necessary parties to an appeal. The

controversy was as to various pieces of property, right or title to which was claimed by different defendants; and the court considered that there was no common interest so as to make the decree in truth a joint one.

The facts of *Basket v. Hassell, 107 U. S. 602 (1882)* appear so different from the facts in the present case as to make it inapplicable.

City Bank v. Hunter, 129 U. S. 557 (1889) clearly involved a decree that was in no sense joint.

In *Amadeo v. Northern Assurance Company, 201 U. S. 194 (1906)*, it was held that a motion to dismiss should not prevail where the omitted parties were shown to have assigned all their right, title and interest in the controversy and thus to have no possible concern with its outcome.

While here the Civil Sheriff has no pecuniary interest in the outcome of this litigation, the fact is that it is only through him that any decree in the state court, in favor of Dugas, could be enforced, and there is a final judgment forbidding the said Civil Sheriff from taking action to enforce any decree that might be rendered in the state courts in favor of Dugas. We are by no means sure that if the injunction issued by the District Court had run against the Civil Sheriff only, it would not have been just as effectual in affording protection to American.

We believe that the motion to dismiss the appeal was good and that this court should dispose of the controversy by so holding.

II.

ON THE MERITS.

Petitioner has filed, in connection with his petition in this court, six separate specifications of error, and these we shall now deal with, in order; but we fear that it will be very difficult to make a complete separate argument on each point without great repetition.

Specification of Error Number One.

This specification denies that the supplemental proceedings in the interpleader suit were ancillary to the original interpleader suit.

The sole and only basis on which Dugas filed suit in the Civil District Court for the Parish of Orleans against the American and obtained judgment therein against it, was the obligation of the said surety company embodied in its qualifying bond given for account of the Lumbermen's Reciprocal Association. The limit of that bond being Twenty Thousand Dollars ($20,000.00), the American filed its interpleader suit in the United States District Court for the Eastern District of Louisiana. That suit had for its sole and only purpose the holding of the American's liability on account of its said qualifying bond down to the amount of the penalty thereof, or $20,000.00. As to the claim of Dugas, it expressly set forth, in Article 5 of the said petition, the facts as to Dugas' having obtained a judgment against it and its having appealed therefrom to the Court of Appeal for the Parish of Orleans. Consequently, in so far as Dugas was concerned, that judgment and that appeal were definitely involved in the suit. The

plea of estoppel filed by Dugas in the said interpleader suit, in which he asked that the bill of interpleader be dismissed as to him, explicitly set up the judgment obtained by him in the state court, the appeal therefrom by the American and the giving, in connection with such appeal, of the appeal bond signed by the New York Casualty Company as surety. Dugas even attached a copy of the said appeal bond to his said plea of estoppel. His answer in the interpleader suit reaverred the facts as to the judgment of the Civil District Court for the Parish of Orleans, the appeal by the American and the furnishing of the appeal bond, copy of which was likewise attached to the said answer as a part thereof. The very purpose of Dugas' answer was to avoid being injected into the interpleader suit. It thus appears that, as to Dugas, the issue presented in the interpleader suit was whether or not the fact that he had obtained a judgment in the state court, from which the American had appealed and furnished a surety bond in connection with such appeal, precluded the American from impleading him in the interpleader suit. The decree of September 19th, 1932, in said interpleader suit, distinctly resolved those issues in favor of the American and against Dugas. That decree is final and no appeal therefrom was attempted by Dugas or anyone else. Furthermore, we submit that Dugas, in effect, acquiesced in the decree when he stipulated that the subsequent distributional report of the special master should immediately be confirmed by the court without waiting the usual twenty day delay.

The clear purpose of the interpleader suit and the clear effect of the decree therein was to hold that, by the payment into the registry of the federal district court of

the full amount of the qualifying bond, the American had discharged its full duty to all of the defendants in the said interpleader suit, of whom Dugas was one; and the purpose and effect of the injunction was to prevent the defendants, including Dugas, from instituting or prosecuting in any state court, or in any other federal court, any suit or claim against the American growing out of or based on its said qualifying bond. We submit that the decree was intended to give and did give the American a full discharge and acquittance, in so far as concerned Dugas' suit against it in the state court; and the injunctive part of the decree was intended to prevent and did prevent Dugas from taking any steps to prosecute or attempt to prosecute the said suit.

To say that Dugas could, by indirection, proceed against the New York Casualty Company, the surety on the appeal bond of the American, while conceding that he could not proceed against the American, would be to defeat the very purpose of the decree of the Federal Court.

The United States District Court for the Eastern District of Louisiana acquired and exercised jurisdiction of this controversy in connection with the interpleader suit. The decree therein of September 19, 1932, upholding that jurisdiction as to all parties, including Dugas, and resolving the issues presented by Dugas and the other parties thereto, is not before this court for review and is beyond any question a final judgment binding on all parties thereto. Any consideration or discussion of the matter must be with full realization of this fact as a premise.

The necessary effect of the suit subsequently brought in the State Court by Dugas against the New York Casualty Company as surety on the appeal bond of the American was to deal with the subject matter of what had already been adjudicated by the federal court and was covered by the outstanding permanent injunction of that tribunal. If, therefore, there was any doubt or uncertainty as to the interpretation or effectiveness of the relief granted by the federal court, it was within the power of that court to effectuate its previous decree by entering any additional decree necessary to protect its jurisdiction and to carry out the underlying purpose of the decree.

In discussing the question of a supplemental bill in aid of a former decree, this court said, in *Root v. Woolworth, 150 U. S. 401 (1893)*, beginning at page 410:

> "If the bill in the present case could be properly considered as an ejectment bill, the objection taken thereto by the defendant would be fatal to the proceeding; but instead of being a bill of this character it is clearly a supplemental and ancillary bill, such as the court had jurisdiction to entertain. Shields v. Thomas, 18 How. 253, 262; Thompson v. Maxwell, 95 U. S. 391, 399; Story's Eq. Plead., Sections 335, 338, 339, 429.
>
> "It is well settled that a court of equity has jurisdiction to carry into effect its own orders, decrees, and judgments, which remain unreversed, when the subject-matter and the parties are the same in both proceedings. The general rule upon the subject is thus stated in Story's Equity Pleading (9th ed.), Sec. 338:
>
> > 'A supplemental bill may also be filed, as well after as before a decree; and the bill, if after a decree, may be either in aid of the decree, that it

> may be carried fully into execution; or that proper directions may be given upon some matter omitted in the original bill, or not put in issue by it, or by the defence made to it; or to bring forward parties before the court, or it may be used to impeach the decree, which is the peculiar case of a supplemental bill, in the nature of a bill of review, of which we shall treat hereafter. But where a supplemental bill is brought in aid of a decree, it is merely to carry out and to give fuller effect to that decree, and not to obtain relief of a different kind on a different principle; the latter being the province of a supplementary bill in the nature of a bill of review, which cannot be filed without the leave of the court.'

"Under this principle Morton could undoubtedly have brought the bill to carry into effect the decree rendered in his favor against Root, and it is equally clear that his assignee, or privy in estate has a right to the same relief that Morton could have asserted. On this subject it is stated in Story's Equity Pleading, Section 429: 'Sometimes such a bill is exhibited by a person who was not a party, or who does not claim under any party to the original decree; but who claims in a similar interest, or who is unable to entertain the determination of his own rights, till the decree is carried into execution. Or it may be brought by or against any person claiming as assignee of a party to the decree.' The appellee in the present case occupies that position, and he should not, any more than Morton, to whose rights he has succeeded, be put to the necessity of instituting an original or independent suit against Root, and relitigate the same questions which were involved in the former proceeding.

"The jurisdiction of courts of equity to interfere and effectuate their own decrees by injunctions or writs of assistance in order to avoid the relitigation of questions once settled between the same parties,

is well settled. Story's Eq. Jur. Sec. 959; Kershaw v. Thompson, 4 Johns. Ch. 609, 612; Schenck v. Conover, 13 N. J. Eq. (2 Beasley) 220; Buffum's case, 13 N. H. 14; Shepherd v. Towgood, Tur. & Rus. 379; Davis v. Bluck, 6 Beav. 393. In Kershaw v. Thompson, the authorities are fully reviewed by Chancellor Kent, and need not be reexamined here."

In the earlier case of *Thompson v. Maxwell, 95 U. S. 391, (1877)*, we find, beginning at page 399:

"Tested, therefore, by any law of procedure which may be invoked in its support, the bill in this case, considered as a bill of review, seeking to reverse, modify, and reconstruct the decree of September, 1866, cannot be sustained. Nevertheless, the general purpose which it evidently had in view—the quieting of the title to the land in question—is one towards which a court of equity is always liberally disposed, as tending to promote the peace of society and the security of property. And if, instead of seeking to reverse the decree of September, 1866 (which, for like reasons of public policy, as applicable to the security of judgments that have passed into rem adjudicatam, is not allowable), the bill had sought to carry that decree more effectually into execution, it would have been free from legal objections, and equally conducive to the object in view. Bills for the purpose named are well known in equity proceedings. Lord Redesdale says:

'Sometimes, from the neglect of parties, or some other cause, it becomes impossible to carry a decree into execution without the further decree of the court. This happens, generally, in cases where parties having neglected to proceed upon the decree, their rights under it become so embarrased by a variety of subsequent events that it is necessary to have the decree of the court to settle and ascertain them. Sometimes such a bill is exhibited by a person who was not a party to the original

decree, but claims a similar interest, or is unable to obtain the determination of his own right till the decree is carried into execution. Or it may be brought by or against a person claiming as assignee of a party to the decree. The court in these cases in general only enforces, and does not vary, the decree; but on circumstances it has sometimes considered the directions and varied them in case of mistake; and it has even on circumstances refused to enforce the decree; though in other cases the court, and the House of Lords upon an appeal, seem to have considered that the law of the decree ought not to be examined on a bill to carry it into execution.' Redesdale's Treatise, 95, 96.

"It seems to us that the remedy here described by such high authority is applicable to the case at bar. The decree of September, 1866, has never been carried into effect by any act done since it was made. It directed that Maxwell should pay the money stipulated for by the compromise, and that the defendant should execute deeds of conveyance. But the parties seem to have assumed that their previous acts performed in May, 1866, were a sufficient compliance with the directions of the decree. Yet the decree does not take notice of this fact.

"Now, in order to execute this decree, or to determine whether it has or has not been substantially executed, and to determine and declare the effect of such execution upon the rights of all concerned, and thus remove any cloud from the title arising from the imperfection of the proceedings, it was perfectly competent for the parties to file a bill conceived and constructed to that end. The bill in this case, as originally filed, before it was converted by amendment into a bill of review, and abating the allegations of error in the original decree, approximated to the character of such a bill as might have been sustained. The proofs show a case which, in our judgment, supports the conclusions of the de-

> cree, to the effect that the terms of compromise made by the adult parties to the suit (including the mother and guardian of the infant heirs of Alfred Bent) were advantageous to the said infants, and were so considered and accepted by the court in their behalf. But, so far as the present decree undertook to reverse and modify the decree of September, 1866, we think it is clearly erroneous. Still, although we feel obligated to reverse the present decree, we do not think that the bill should be absolutely dismissed. And, as the whole question between the parties has been fully litigated on the proofs, it would be unreasonable to require that these should be taken over again."

Wilson v. Alexander, 276 Fed. 875 (1921), a decision of the Circuit Court of Appeals for the Fifth Circuit, grew out of a bill filed in the federal court in Texas assailing the validity of a certain bond issue and making all parties at interest defendants. Wilson, the holder of the bonds, filed a cross bill seeking a foreclosure under the deed of trust. At such foreclosure the property was bought in by Wilson. Some seven years later Alexander, who had pledged the bonds to Wilson, brought a suit in the state courts in Texas to obtain possession of the property, Alexander having been a party to the original suit in the federal court. What then happened was set out as follows at page 878 of the opinion:

> "Wilson thereupon filed, in the United States District Court for the Northern District of Texas, a bill, styled a supplemental cross-bill and bill of revivor, entitled in the said cause of McCornick & Co., Bankers, v. Texas Loan & Trust Company, et al., reciting the former proceedings in said cause and the decree entered therein, alleging that by said decree it was adjudged that Alexander was fore-

closed from asserting any ownership of, claim to, or interest in said property, or any part thereof, and that the deed made to said Wilson by the Texas Loan & Trust Company was in satisfaction of said decree in said cause. He prayed an injunction against the prosecution of so much of said state court suit as attempted to disregard or overthrow the decree in said cause above recited, and that said decree be construed and enforced, so as to forever bar Alexander from in any wise asserting any ownership of, claim to, or interest in said property, or any part thereof, or from asserting in said state court, or otherwise, that he has any claim thereto."

The district court granted, only to a limited extent, the relief sought by the bill. The Circuit Court of Appeals affirmed the judgment, in so far as it upheld the bill and reversed it in so far as it failed to uphold it, stating at pages 879-880:

"If it be true that the proceeding filed by Alexander in the state court attacks, in a substantial respect, the effect of the decree rendered in the United States court on June 7, 1912, there can be no doubt of the jurisdiction of the United States court to entertain proceedings to construe and give full effect to its decree, and to protect one holding under a deed made in accordance therewith. A case of such a character is not affected by Judicial Code, Sec. 265 (Rev. St. Sec. 720), prohibiting the enjoining by a United States court of a proceeding in a state court except under a law relating to proceedings in bankruptcy. In such case the United States court is protecting its previously acquired jurisdiction, which has resulted in a decree giving rights which are attacked by subsequent proceedings brought in a state court.

"A striking illustration of this is afforded by the case of Gunter, Attorney General, etc., v. Atlantic Coast Line, 200 U. S. 273, 26 Sup. Ct. 252, 50 L.

> Ed. 477. In a former suit, brought by parties in privity with the Atlantic Coast Line Railway, a decree was rendered adjudging that a railroad had a contract with the state exempting it from certain taxation. The state had become a party to said suit. For at least 25 years thereafter no further attempt was made to tax the property so declared exempt. Thereafter another attempt was made, and suits to collect such taxes were instituted in the state courts. Thereupon the defendant in said state court suits began proceedings in the United States circuit court for the District of South Carolina, filing a bill as ancillary to the former case, terminated for more than 25 years, setting up that the decree therein was res judicata as to the existence of the tax exemption, that the suits in the state courts sought to relitigate said question, and prayed an injunction. After holding that the state of South Carolina was a party to the original suit in the United States court, the court held an injunction would properly issue to enjoin the further progress of the suits in the state courts, and that in such a case section 720 of the Revised Statutes did not apply. Gunter v. Atlantic Coast Line, 200 U. S. 273, 292, 26 Sup. Ct. 252, 50 L. Ed. 477."

As to any suggestion that the supplemental bill herein should have been denied because not filed at the same term of court within which the original interpleader decree was entered, we cite *McCutchen v. Union Trust Company, 271 Fed. 586 (1921)* (writ denied, *256 U. S. 699*), decided by the Circuit Court of Appeals for the Eighth Circuit, in which the court said at page 593:

> "The fact that the terms of court at which the foreclosure decree and the order for the receivers' sale were entered had expired is not important. The decision of the state courts, giving to the order an effect not contemplated when it was made, and in-

volving also the foreclosure decree according to Hardin's contention, occurred subsequently. It was proper to bring the subsequent situation so created to the attention of the court below by supplemental bill."

Following a federal court decision in a certain matter, two suits were brought in the state courts and two in the federal courts seeking to relitigate certain points involving the subject matter of a previously decided suit in the federal court. Thereupon, a supplemental bill was filed to enjoin the plaintiffs in these new suits. In this matter, *Sterling v. Gredig, 5 Fed. Supp. 329*, the relief sought was granted. The following language was used at page 332:

"Complainants seek, in this suit, to enforce and effectuate the decree. They allege that respondents, by the prosecution of the pending suits, are seeking to render the decree void and ineffectual, and to unsettle and annul what has been there settled. And that the filing and prosecution of said suits have, and will continue to have, the effect of clouding the title of the trustees and the city to the properties; of embarrassing, hindering, delaying and impeding them in the proper administration thereof; and that said suits are vexing and harassing to complainants, and are subjecting them, and will continue to subject them, to the necessity of expending considerable sums of money in the payment of costs, expenses and attorneys' fees in and about the defense of said suits; will compel complainants to submit to a multiplicity of suits to therein relitigate what has already been litigated, adjudicated, and settled in their favor by such decree, and that complainants are being deprived, and will be deprived, of the practical benefit and value of the decree in their favor, and deprived of the protection and enforcement of the right, title, and interest acquired by such decree.

"These allegations I find to be true.

"It follows that complainants are entitled to the relief asked."

In *Local Loan Company v. Hunt, 292 U. S. 234 (1934)*, Hunt borrowed Three Hundred Dollars from the Loan Company, and, as security, executed an assignment of wages to be earned. Later Hunt filed a voluntary petition in bankruptcy, was adjudged a bankrupt and order was entered discharging him from all provable debts and claims. Thereafter, the Loan Company brought suit in the state courts against Hunt's employer to enforce the assignment in regard to wages earned after adjudication. Thereupon Hunt went into the bankruptcy court and asked that the Loan Company be enjoined from prosecuting or attempting to enforce its claim under the wage assignment. The bankruptcy court entered a decree as sought. In affirming it, this court said at page 239:

"The pleading by which respondent invoked the jurisdiction of the bankruptcy court in the present case is in substance and effect a supplemental and ancillary bill in equity, in aid of and to effectuate the adjudication and order made by the same court. That a federal court of equity has jurisdiction of a bill ancillary to an original case or proceeding in the same court, whether at law or in equity, to secure or preserve the fruits and advantages of a judgment or decree rendered therein, is well settled. Root v. Woolworth, 150 U. S. 401, 410-412; Julian v. Central Trust Co., 193 U. S. 93, 112-114; Riverdale Mills v. Manufacturing Co., 198 U. S. 188, 194 et seq.; Freeman v. Howe, 24 How. 450, 460. And this, irrespective of whether the court would have jurisdiction if the proceeding were an original one.

The proceeding being ancillary and dependent, the jurisdiction of the court follows that of the original cause, and may be maintained without regard to the citizenship of the parties or the amount involved, and notwithstanding the provisions of Sec. 265 of the Judicial Code (R. S. Sec. 720), U. S. C., Title 28, Sec. 379. Julian v. Central Trust Co., supra, 112; Dietzsch v. Huidekoper, 103 U. S. 494, 497; Root v. Woolworth, supra, 413; M'Donald v. Seligman, 81 Fed. 753; St. Louis, I. M. & S. Ry. Co. v. Bellamy, 211 Fed. 172, 175-177; Brun v. Mann, 151 Fed. 145, 150."

Other decisions which support our contentions are:

Shields v. Thomas, 18 Howard, 253 (1855);

Healey Ice Machine Company v. Green, 184 Fed. 515 (CC. N. C. 1911);

Osage Oil & Refining Co. v. Continental Oil Co., 34 Fed. (2) 585 (C. C. A. 10, 1929);

Ross v. Miller, 252 Fed. 697 (C. C. A. 4, 1918);

McCabe v. Guaranty Trust Company, 243 Fed. 845 (C. C. A. 2, 1917);

Lamb v. Cramer, 285 U. S. 217 (1932);

Lamb v. Schmitt, 285 U. S. 222 (1932);

Sand Springs Home v. Title Guarantee & Trust Co., 16 Fed. (2d) 917 (C. C. A. 8, 1926);

Baush Machine Tool Company v. Aluminum Company of America, 63 Fed. (2d) 778 (C. C. A. 2, 1933);

Hickey v. Johnson, 9 Fed. (2d) 498 (C. C. A. 8, 1925).

The propriety of a supplemental bill in aid of a previous judgment, such as herein filed, is well recognized by the text writers. *Story's Equity Pleadings, Ninth Edition, Chapter 8, pages 292, et seq.*, deals with this subject

and we find in *Section 336*, beginning at page 299, the following:

> "In the next place, when new events or new matters have occurred since the filing of the bill, a supplemental bill is, in many cases, the proper mode of bringing them before the court; for, generally, such facts cannot be introduced by way of amendment to the bill. But, here, we are to understand, that such new events, or new matters, do not change the rights or interests of the parties before the court (for then, properly speaking, the bill is not simply a supplemental bill), but they merely refer to and support the rights and interests already in the bill. A supplemental bill may also be brought, not only to insist upon the relief already prayed for in the original bill; but upon other relief different from that which was prayed for by the original bill, where facts which have since occurred may require it. Thus, if pending a bill to restrain proceedings at law upon a bill of exchange, the holder should obtain a judgment in the suit at law, the plaintiff in equity may file a supplemental bill, stating the facts, and praying for repayment and an indemnity."

2 Hughes Federal Practice, Section 1226, page 394, reads:

> "The function of a supplemental bill in aid of a decree is merely to give fuller effect, or carry out that decree, and not to obtain relief of a different kind on a different principle. As assignee, or privy in estate, has the same right to relief as the one in whose favor the decree was made. A federal court, having entered a decree removing a cloud from the title to a parcel of real estate and declaring the title vested in A in interest and estate, has jurisdiction of a supplemental and ancillary bill brought by A's successor to carry that decree into effect."

See also *Cyclopedia of Federal Procedure, Vol. 4, Section 1157, pages 336, et seq.*

It seems to us that what we did was very much along the lines contemplated by *Equity Rules 34 and 35*, which read as follows:

> "Rule 34—SUPPLEMENTAL PLEADING.—Upon application of either party the court or judge, may, upon reasonable notice and such terms as are just, permit him to file and serve a supplemental pleading, alleging material facts occurring after his former pleading, or of which he was ignorant when it was made, including the judgment or decree of a competent court rendered after the commencement of the suit determining the matters in controversy or a part thereof."
>
> "Rule 35. BILLS OF REVIVOR AND SUPPLEMENTAL BILLS—FORM—It shall not be necessary in any bill of revivor or supplemental bill to set forth any of the statements in the original suit, unless the special circumstances of the case may require it."

For the foregoing reasons, we believe that the Circuit Court of Appeals and the District Court were right in holding that the supplemental proceedings herein were ancillary to the original interpleader suit and were within the jurisdiction of the District Court.

Specification of Error Number Two.

This assignment raises the contention that the right established in favor of the American by the original interpleader decree was not inconsistent with Dugas' right to enforce, against the New York Casualty Company as surety on the state court of appeal bond, his judgment against the American on his claim for workman's compensation.

We repeat that the only basis of any claim which Dugas could assert against the American was the obligation embodied in its qualifying bond. It was that very obligation which was sought to be determined and was determined by the United States District Court in its decree in the interpleader suit; also, is it clear that said decree was entered in the face of Dugas' contention that his having obtained a prior judgment in the state court and the American having appealed therefrom, prevented his being impleaded in the Federal Court. The Federal Court, by its decree, concluded that the American had discharged any and all obligations due under its qualifying bond. That qualifying bond was the sole basis of the judgment in the state court which was, therefore, satisfied. To permit a recovery against the surety on the appeal bond would defeat the very purpose of the decree in the interpleader suit, as it would necessarily mean that the American would have to reimburse its surety, and, thus, in a left-handed way, be forced to pay out more than the amount of its qualifying bond.

The Louisiana Civil Code expressly provides that the surety who pays the debt of his principal is entitled to reimbursement from him. *Article 3052 of the Louisiana Civil Code* reads:

> "Recourse of Surety Against Principal Debtor. The surety who has paid the debt, has his remedy against the principal debtor, whether the surety has been given with or without the knowledge of the debtor.
>
> "This remedy takes place both for the principal and interest, and for the costs which the surety may have been sentenced to pay; but with regard to the costs, the remedy of the surety begins only from the

> day he has given notice to the principal debtor, that a suit was commenced against him."

Article 3053 provides:

> "Subrogation of Surety. With regard to that remedy, the surety has the same right of action and the same privilege of subrogation, which the law grants to codebtors in solido."

The reference in the article last quoted to the rights of codebtors *in solido* is to *Article 2161*, which, in so far as relevant, provides:

> "Subrogation takes place of right * * * for the benefit of him who, being bound with others, or for others, for the payment of the debt, had an interest in discharging it."

Two, among many, Louisiana decisions recognizing the right thus given to the surety against his principal are *Brown v. Staples, 138 La. 602, 608 (1915)*, and *Martel v. Rovira, 164 La. 1099, 1102-3 (1928)*. As a matter of fact, the same rule has been generally recognized: *Aetna Life Insurance Company v. Middleport, 124 U. S. 534 (1888); Henningsen v. United States Fidelity and Guaranty Company, 208 U. S. 404 (1908)*. The *Aetna* case is particularly appropriate, in so far as the subrogation feature is concerned, because of the statement in it that the doctrine of subrogation is derived from the civil law and that, therefore, the Louisiana cases are especially applicable.

Specification of Error Number Three.

This assignment reads:

> "That the said Circuit Court of Appeals erred in holding that the appeal bond was an incident of the suit brought by petitioner against respondent for

the full amount of his claim and was a means of effecting the enforcement of that claim."

When Dugas obtained a judgment against the American in the State Court and the American elected to appeal from such judgment, it was necessary under the law of Louisiana to furnish an appeal bond. We do not see how it can be said that the bond so given was not an incident of the suit in the State Court. The purpose of the bond was to guarantee to Dugas the appellee, that, if successful in the appellate court, he would collect his judgment. However, the surety agreed to be liable only in the event the appellant did not respond; and since it has been determined that the appellant has in the interpleader proceedings in the federal court discharged its full duty to Dugas it must logically follow that the surety on the appeal bond given in the State Court has no further liability. When an unsuccessful litigant seeks a review by an appellate court of the judgment of the trial court, the appeal bond he gives is the price he must pay for preventing the judgment creditor from executing pending determination of the appeal (in the case, as here, of an appeal with stay) and getting the review. The appeal bond is in no sense a separate or independent undertaking, but merely an incident in the suit.

Specification of Error Number Four.

This assignment complains of the action of the Circuit Court in holding that the liability under the appeal bond was a liability on account of the qualifying bond, and that it came within the scope of the decree discharging respondent from all liability on the qualifying bond.

Considering that the sole basis of Dugas' judgment in the state court against the American was the qualifying bond of the American, it seems not unnatural to recognize that fact. What seems to be running through counsel's mind is the idea that once a judgment was obtained in the state court against the American, the claim under the qualifying bond passed out of the picture. It must not, however, be overlooked, that if this was true, Dugas had no right to any recovery in the interpleader suit, which certainly related only to the qualifying bond. Clearly, the District Court in its decree in the interpleader suit denied this very contention of Dugas and held that the judgment he had obtained in the state court was cognizable in the interpleader suit. In this connection it is not to be overlooked that the giving, by the American, of an appeal bond in the state courts was strongly stressed in the interpleader suit, and that any contentions by Dugas in regard thereto were denied. The present matter does not grow out of an appeal from the original decree in the interpleader suit. That decree is final and cannot now be reviewed. The question is whether, in spite of the finality of that decree, its purpose is to be defeated by a subsequent suit in the state court against the surety on the appeal bond of the American. The District Court held that, in order to protect the enforcement of its original decree in the interpleader suit, it was warranted in enjoining Dugas from frittering away that decree by attempting to hold the surety on the appeal bond. The Circuit Court of Appeals was, most assuredly, correct in upholding the action of the District Court in this regard.

Specification of Error Number Five.

This assignment challenges the holding of the Circuit Court of Appeals, that the proceeding against the surety on the appeal bond, was an indirect method of proceeding against the American on its qualifying bond.

Indubitably, the sole basis of liability asserted against the American was the statutory qualifying bond executed by it, and that liability was, therefore, the foundation of the judgment of the state court against the American in connection with the appeal from which the appeal bond of the New York Casualty Company was given. If, therefore, the New York Casualty Company, the surety on the said appeal bond, be made to pay Dugas, the New York Casualty Company will look to the American for protection, and, so the American will have to reimburse the New York Casualty Company. If this is not an indirect method of proceeding, by Dugas, against the American, it is difficult to know what would be. It would be a doing, by indirection, of the very thing that the original injunctive decree of the Federal District Court in the interpleader suit was intended to prevent.

Specification of Error Number Six.

This assignment raises the point that the Circuit Court of Appeals erred in holding that the decree of the district court did not go beyond giving due effect to the final decree in the interpleader suit.

The underlying proposition has, necessarily, already been argued in connection with discussion of the other assignments and we shall, therefore, deal with it very briefiy.

The purpose and effect of the decree of the district court of September 19, 1932, was to recognize the fact that the American had discharged its full duty in connection with its qualifying bond and to enjoin the various defendants, including Dugas, from taking any other action to realize on any claim against that bond. Obviously, the judgment which Dugas had in the state court against the American grew out of and was based solely on the said qualifying bond. To permit Dugas to enforce the said judgment, by proceeding against the New York Casualty Company, the surety on the appeal bond, while conceding that he cannot proceed against the American, would be an indirect method of holding the American, for the simple reason that the New York Casualty Company would have an absolute right to reimbursement by the American. Besides, to permit a recovery against the New York Casualty Company would, we submit, be against equity and good conscience and would, most assuredly, be to set at naught the underlying purpose of the decree of the Federal District Court of September 19, 1932.

CONCLUSION.

Stripped of immaterial details, the bare contention of the petitioner herein is that he should be allowed to collect from the New York Casualty Company his claim against the American, concededly based solely on the qualifying bond given by it for account of the Lumbermen's Reciprocal Association, which said claim was recognized by the judgment of the Civil District Court for the Parish of Orleans, from which judgment the American appealed to the Court of Appeal for the Parish of Orleans, and fur-

nished an appeal bond signed by the New York Casualty Company, as surety. This contention loses sight of the fact that, after the taking of the said appeal, the American deposited the full amount of its said qualifying bond in the registry of the United States District Court for the Eastern District of Louisiana and interpleaded the various claimants against the said bond, including Dugas, who vigorously resisted the attempt to interplead him on account of the judgment which he had already obtained in the state courts and the appeal bond therein given by the American. The United States District Court held that Dugas was properly interpleaded and adjudicated on his claim against the American growing out of its said qualifying bond, definitely holding that the American had, in the interpleader proceedings, completely discharged its full liability to the various claimants, including Dugas, and enjoined them from taking any steps to assert or prosecute their claims elsewhere against the American. If Dugas was dissatisfied with the judgment of the Federal Court of September 19th, 1932, he had the right to appeal therefrom. Not only was no such appeal taken, but, by stipulating that the later distributive decree of April 20, 1933, should be entered without the usual delays, Dugas acquiesced in the decision of the Federal Court which was, of course, adverse to his contentions. There being no further claim on the part of Dugas against the American, he should not be allowed to assert a claim against the surety on the appeal bond of the American in the State Court, which appeal bond was but an incident to his main claim against the American, which was satisfied and discharged by the interpleader proceedings in the Federal Court. Therefore, the Federal District Court was

right in enjoining Dugas from attempting to collect from the New York Casualty Company and the Circuit Court of Appeals was right, on the merits, in affirming that judgment.

In conclusion, we ask that the case be remanded to the Circuit Court with instructions to dismiss the appeal, and in the alternative we submit the judgment should be affirmed.

Respectfully submitted,

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Attorneys for American Surety Company
of New York, Respondent.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 340

ETIENNE DUGAS,

Appellant,

versus

AMERICAN SURETY COMPANY OF NEW YORK,

Appellee.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

PETITION FOR REHEARING

And

BRIEF IN SUPPORT THEREOF.

IGNATIUS E. UZZO,
Attorney for Petitioner.

JAMES J. LANDRY,
WILLIAM C. ORCHARD,
Of Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 340

ETIENNE DUGAS,

Appellant,

versus

AMERICAN SURETY COMPANY OF NEW YORK,

Appellee.

PETITION FOR REHEARING.

Now comes Etienne Dugas, Appellant, in the above named and numbered cause and respectfully petitions this Honorable Court to grant a rehearing of the opinion and decree rendered in this cause on March 29, 1937, with respect represents:

Petitioner avers that this Honorable Court erred in the majority opinion hereinabove referred to in the following particulars:

(1) In holding that Dugas' judgment in the State Court was based solely on the qualifying bond whereas as a matter of law and fact, said judgment was a general judgment against all the property of the Surety Company.

(2) In holding that the appeal bond was in the nature of a security for the satisfaction of the judgment

in Dugas' suit on the qualifying bond and by failing to hold that the obligation of the appeal bond to prosecute the appeal had been breached by the filing of the interpleader suit and the abandonment of the appeal.

WHEREFORE, petitioner prays that a rehearing be granted in this cause; that the brief accompanying this application be considered as part hereof, and that the decree and judgment heretofore rendered be recalled and avoided and that there finally be judgment reversing the judgment of the Circuit Court of Appeals for the Fifth Circuit and for all necessary and appropriate orders in the premises.

I. E. UZZO,
Attorney for Petitioner.

JAMES J. LANDRY,
WILLIAM C. ORCHARD,
Of Counsel for Petitioner.

CERTIFICATE.

I certify that the above application for rehearing is in my opinion well founded in law and not filed for the purpose of delay.

I. E. UZZO,
Attorney for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR REHEARING.

May It Please the Court:

I.

The judgment of Dugas in the State Court was not limited to the qualifying bond but was a general judgment against all the property of the respondent herein.

A reading of the judgment in the State Court (R. 14-15) will clearly show the generality of the judgment.

We can only again call the Court's attention to the language of the Supreme Court of Louisiana in the case of *Dugas v. New York Casualty Company, 181 Louisiana 322, 159 Southern Rep. 572*, and which holding is quoted with approval by Judge Sibley at *pages 128-129* of the record, which is as follows:

> "The United States court did not in its decree undertake to destroy or limit Dugas' right of action against New York Casualty Company as surety on the appeal bond which was given to suspend the execution and to secure the payment of the judgment rendered by the District Court for the Parish of Orleans. We must bear in mind that this suit is not founded on the qualifying bond of $20,000 which the American Surety Company signed as surety for Lumbermen's Reciprocal Association, but is founded upon the suspensive appeal bond for $10,000 which the New York Casualty Company signed as surety for the American Surety Company. The $20,000 qualifying bond passed out of the case when the American Surety Company abandoned its appeal in that suit on that bond, and thereby rendered the

> New York Casualty Company liable as surety on the $10,000 appeal bond" - - - "It is true that if the New York Casualty Company has to pay, and if the American Surety Company has to reimburse the New York Casualty Company, the American Surety Company will have paid out more than the amount of the $20,000 qualifying bond. But that happened in Mrs. Brim's case and in the Lyon Lumber Company case, (American Surety Co. v. Brim, et al., 176 La. 867, 147 So. 18), as a consequence of the failure of the American Surety Company to provoke an interpleader suit until plaintiff in each of those cases had obtained a final judgment against the American Surety Company (on suspensive appeal); and by the same token it may happen in this case."

We respectfully submit as authority that the judgment of Dugas in the State Court was a general and not a limited judgment, the following excerpts from the opinion of the Supreme Court of Louisiana in *Dugas v. New York Casualty Company, supra*, R. 61:

> "It is agreed by counsel for the New York Casualty Company that the American Surety Company did not abandon its appeal, but, on the contrary, satisfied the judgment appealed from, by depositing in the United States District Court, the amount of the $20,000 bond on which the suit was founded. That would be true, perhaps, if the judgment which Dugas had obtained against the American Surety Company had been limited in its terms so that he could collect only a proportionate share of the amount of the $20,000 bond on which the suit was brought. *But the judgment which Dugas held against the Ameriman Surety Company was unqualified in that respect, and was exigible against any property belonging to the company.*"

Also an excerpt from the dissenting opinion of Judge Sibley at pages 129-130 of the record:

> "Had American Surety Company, when Dugas obtained judgment against it, at once filed its interpleader, all its obligations to Dugas would have ended. But it saw fit to appeal, and to arrest execution of the *general judgment against it* by giving another obligation for its payment. - - - "

II.

The Court erred in failing to hold that the filing of the interpleader suit was an abandonment by respondent of its appeal and a breach of the terms and conditions of the appeal bond which rendered the surety liable.

The Court in the majority opinion held "The appeal bond was in the nature of a security for the satisfaction of the judgment in Dugas' suit on the qualifying bond.

From the above holding it is clearly seen that the Court overlooked the other and principal condition of the appeal bond, namely:

"That the appellant shall prosecute his appeal."

The statute setting forth the terms and conditions of the bond is *Article 579 of the Code of Practice of Louisiana*, which reads:

> "In the appeal bond it must set forth in substance, that it is given as surety *that the appellant shall prosecute his appeal*, and that he shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in

his appeal, otherwise that the surety shall be liable in his place."

This statute is written into every suspensive appeal bond executed in the Courts of Louisiana. Let us see if respondent and its surety on its appeal bond, executed to prevent the seizure of all its property, complied with the terms and conditions of their statutory appeal bond. Before the hearing on the appeal by the State Court of Appeals, respondent filed his interpleader suit in the Federal District Court. Its surety on the appeal bond was not a party to that proceeding or to any proceeding in the Federal Court. Dugas was ordered to set up his claim against the qualifying bond, but did not in any way seek to establish his rights under the appeal bond as the New York Casualty Company, surety thereon, was not a party to the interpleader proceedings.

After the conclusion of the original interpleader suit, petitioner brought suit against New York Casualty Company as surety on the appeal bond on the ground *that the filing of the interpleader suit was an abandonment by respondent of its appeal and a breach of the terms and conditions of the appeal bond which rendered the surety liable. This contention was approved in this very case by the Louisiana Supreme Court in Dugas v. New York Casualty Company, 181 Louisiana 322, 159 Southern 572, and in record herein at pages 59, 60, 61.*

This decision interpreting the statute relating to appeal bonds and the breach of their terms and conditions

by the Louisiana Supreme Court settles the question for the Federal Courts.

In that case in an exhaustive and able opinion the Louisiana Supreme Court held in part:

> "The conditions of the appeal bond on which this suit is founded are precisely in accord with the terms prescribed in article 579 of the Code of Practice, viz: 'That it is given as surety *that the appellant shall prosecute his appeal*, and that he shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in his appeal, otherwise that the surety shall be liable in his place.' *The first obligation on the part of an appellant, in order to save the surety from liability on the appeal bond, is 'that the appellant shall prosecute his appeal'.* If he prosecutes his appeal, he must also 'satisfy whatever judgment may be rendered against him, * * * otherwise the surety shall be liable in his place'. But the appellant may render the surety liable as well by abandoning his appeal, as by prosecuting the appeal and then failing to satisfy whatever judgment may be rendered against him. It was so decided in Champonier v. Washington, 2 La. Ann. 1013. In that case the appeal was declared abandoned by the failure of the appellant to file the transcript before the expiration of the return day. See Champonier v. Washington, 2 La. Ann. 722. The plaintiff then proceeded against the surety on the appeal bond, and he pleaded that the plaintiff had no right to proceed against him 'because the judgment against Washington, from which the appeal was taken, was not affirmed by this (the Supreme) Court'. The Court held that, as the appellant had not prosecuted his appeal, but had abandoned it, the obligation for which the surety was liable on the appeal bonds was

to pay the judgment appealed from. In so deciding the Court said:

> 'Where an appellant abandons his appeal, the surety on the appeal bond cannot exempt himself from responsibility on the ground that "the judgment appealed from has not been affirmed", as contemplated by sec. 20 of the stat. of 20 March, 1839, and arts. 575, 596, of the Code of Practice. Percuriam: The condition of the appeal bond, following literally the requisition of art. 579 of the Code of Practice, was "that the appellant shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him", &c. The appellant did not prosecute his appeal, and the condition of the bond was thus broken.'

That decision was cited with approval in Moore, Janny & Hyams v. Lalaurie, 27 La. Ann. 1013, and in Rowle v. Feltus, 33 La. Ann. 422, and in Russ & Hollingsworth v. Their Creditors, 45 La. Ann. 422, 12 So. 627; in which cases it was held that an appeal bond which did not contain the obligation or condition that the appellant should prosecute his appeal was not a valid appeal bond. To the same effect see the editorial note to Woodle v. Settlemeyer, L. R. A. 1915 A, p. 845, III, and Ann. Cas. 1916, p. 1228.

The American Surety Company in this instance, *abandoned the appeal which the company had taken from the judgment of the Civil District Court to the Court of Appeal for the Parish of Orleans, when the Company went into the United States District Court and enjoined Dugas from prosecuting his suit, then pending in the Court of Appeal.* It is argued by counsel for the New York Casualty Company that the American Surety Company did not abandon its appeal, but, on the contrary, satisfied the judgment appealed from, by depositing in the United States District Court the amount of the $20,000 bond on which the suit was

> founded. That would be true, perhaps, if the judgment which Dugas had obtained against the American Surety Company had been limited in its terms so that he could collect only a proportionate share of the amount of the $20,000 bond on which the suit was brought. But the judgment which Dugas held against the American Surety Company was unqualified in that respect, and was exigible against any property belonging to the company. The judgment was a final judgment, not subject to annulment or amendment except by the Court having appellate jurisdiction. Code of Prac. Arts. 539, 565. And the execution or collection of the judgment was prevented only by the suspensive appeal, and on the condition that the appellant, American Surety Company, should prosecute the appeal, and should satisfy whatever judgment might have been rendered against the company, or that the surety on the appeal bond, the New York Casualty Company, should be liable in its place. The expression in the article of the code, 'that the surety shall be liable in his place', means that the surety shall be liable for whatever judgment the principal on the bond shall be liable for; that is, the judgment of the appellate Court if the appellant prosecutes his appeal, or the judgment appealed from if the appellant *abandons* the appeal. Any other interpretation would render a suspensive appeal bond worthless in the case of an abandonment of an appeal from a money judgment. *And any other interpretation would contradict* the very language of the bond, 'that the appellant shall prosecute his appeal.'"

The New York Casualty Company's obligation under the bond, according to the decision of the Louisiana Supreme Court, was to see that the American Surety Company prosecuted the appeal in accordance with the statutory terms and conditions of the appeal bond or to pay the amount of

the judgment in its place. It was a separate and distinct undertaking from that of the American Surety Company in favor of petitioner. Can courts of equity grant a release from the plain and positive terms of a contract not charged to have been entered into by fraud or violence? And without all of the parties to that contract being made parties to such action? Will they release a party from a solemn and sacred bond whose statutory terms and conditions were well known to the surety and principal thereon and which bond was executed freely and knowingly by the parties thereto in favor of the petitioner, and which bond is the sole and only law between them without reference to any other bond or bonds?

When the American Surety Company induced the New York Casualty Company to sign as its surety on the appeal bond, it did so with full knowledge of the statutory law of the State and of the effect and purpose of the contract. The appeal bond was voluntary as to the American Surety Company and the New York Casualty Company, but was forced so far as Dugas was concerned, because, whilst the American Surety Company before filing that bond could have either stayed the judgment by paying, or have its interpleader proceeding or have permitted Dugas to levy execution. It chose to prosecute an appeal and by filing of the motion and the bond, which is the subject of this litigation, it chose that course, and when it did, Dugas was forced to accept because he could do nothing except to question the validity of the bond in the proceedings for appeal thereafter.

We again conclude with the correct summary of the entire case given by Judge Sibley in his dissenting opinion at *pages 129-130* of the Record:

> "Had American Surety Company when Dugas obtained judgment against it at once filed its interpleader, all its obligations to Dugas would have been ended. But it saw fit to appeal, and to arrest execution of the general judgment against it by giving another obligation for its payment. The consideration of the appeal bond was the delay to be obtained. That consideration was enjoyed, and the bond as a collateral obligation stands good according to its terms. According to those terms the bond has been breached, and the liability on it has become absolute."

We respectfully submit, therefore, that the majority opinion of this Court is erroneous and should be recalled and avoided and that the decree and judgment of the United States Circuit Court of Appeals for the Fifth Circuit should be reversed.

Respectfully submitted,

I. E. UZZO,
Attorney for Petitioner.

JAMES J. LANDRY,
WILLIAM C. ORCHARD,
Of Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES.

No. 340.—October Term, 1936.

Etienne Dugas, Petitioner, *vs.* American Surety Company of New York.	Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[March 29, 1937.]

This case presents a controversy over the scope and effect of the decrees of a federal district court in a suit brought by a surety company under the Interpleader Act of May 8, 1926,[1] and over the propriety of subsequent proceedings in the same court upon a supplemental bill brought in aid of and to effectuate that decree.

It will be helpful to state the facts with some detail.

February 12, 1930, the Lumbermen's Reciprocal Association, a Texas insurance corporation, by way of qualifying itself to engage in writing workmen's compensation and other insurance in Louisiana, executed a bond, in the sum of $20,000.00, conditioned for the payment of claims lawfully arising against it by reason of insurance so written. The bond was given conformably to a Louisiana statute,[2] and was executed by the American Surety Company, a New York corporation, as surety. Later in 1930, and after writing a substantial volume of insurance in Louisiana, the Lumbermen's Reciprocal Association became embarrassed and was placed in the hands of a receiver by a court in Texas.

April 14, 1931, in a suit brought in a Louisiana court, Etienne Dugas, who had a claim against the Lumbermen's Reciprocal Association arising out of workmen's compensation insurance written by it in Louisiana, recovered against the American Surety Company, as surety on the qualifying bond, a judgment for the payment of $20.00 per week for not more than 300 weeks commencing May 15, 1930, subject to modification as to future payments if his

[1] Ch. 273, 44 Stat., Pt. 2, 416. Repealed and new act substituted January 20, 1936, c. 13, 49 Stat. 1096, but with saving clause respecting any act done or any right, accruing or accrued, in any suit or proceeding had or commenced under the earlier act prior to its repeal.

[2] Act 172, La. Laws, 1908, p. 232.

disability was relieved or reduced, and for $250.00 for medical bills, together with costs.

The American Surety Company appealed to the Court of Appeal from that judgment, and, for the purpose of suspending execution pending the appeal, it executed a bond conditioned that it should diligently prosecute its appeal and satisfy whatever judgment might be rendered against it if cast in the appeal. The appeal bond was given conformably to a law of the State,[3] was in the sum of $10,000.00 and was executed by the New York Casualty Company as surety. The appeal was perfected and the record duly filed in the Court of Appeal, but nothing further was done therein for reasons which soon will appear.

Many other claims arising out of insurance written in Louisiana by the Lumbermen's Reciprocal Association were asserted under the qualifying bond. In the aggregate these claims were far in excess of the amount of the bond.

June 6, 1931, desiring to avail itself of the provisions of the Interpleader Act of May 8, 1926, the American Surety Company, with the court's leave, paid into the registry of the federal district court at New Orleans, Louisiana, the sum of $20,000.00, being the full amount of the qualifying bond, and thereupon filed in that court a duly verified bill of interpleader in which it set forth the several matters here recited, including the proceedings, judgment and appeal in Dugas' suit on the qualifying bond; stated the names and places of residence of the several claimants under that bond, so far as they were known to it; and further alleged—

"This Court has jurisdiction because this is a bill of interpleader in equity brought by a surety company against bona fide adverse claimants against its bond of February 12, 1930, two or more of whom are citizens of different states, and one or more of said adverse claimants resides or reside within the territorial jurisdiction of this Court."

"Plaintiff disclaims any interest in the amount of its said bond except to pay same to the persons lawfully entitled thereto."

"By reason of the conflicting claims against the said bond, and the fact that claims already known to plaintiff greatly exceed the amount of the said bond, plaintiff is in grave danger of being greatly harassed and damaged, and cannot safely make payments to any claimant without the aid of this Court."

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[3] La. Code Prac., arts. 575, 579.

"Plaintiff, with the permission of this Court first obtained, has paid into the Registry of this Court the said sum of $20,000.00, the amount of said bond, to abide the judgment of this Court."

The bill prayed that Dugas and the other claimants be cited to interplead and settle among themselves their claims to the amount of the bond deposited in the court's registry; that each of them be temporarily and permanently enjoined from instituting or prosecuting in any state court or in any other federal court any suit on account of any right or claim growing out of the qualifying bond; that the plaintiff be released from all further liability on the qualifying bond; and that any other or further relief deemed proper in the premises be granted.

All claimants under the qualifying bond, including Dugas, were called into the suit as defendants.

June 24, 1931, the court after a hearing granted an interlocutory injunction conforming to the prayer in the bill.

Dugas resisted the bill by an exception of no cause of action, a plea of estoppel and an answer. In the plea and answer he specifically relied on the judgment of April 14, 1931, in the state court and the appeal therefrom, together with the appeal bond, as showing that he should not be brought into the interpleader suit.

September 19, 1932, after a full hearing, the court rendered a decree as follows:

1. Declaring the American Surety Company had complied with all of its obligations under the qualifying bond by depositing the full amount of the bond in the court's registry at the time of bringing the suit; and further declaring that company, by reason of such compliance, to be released and discharged from any and all further liability on account of such bond;

2. Enjoining each of the defendants from instituting or prosecuting in any state court, or in any other federal court, any suit against the American Surety Company on account of any right or claim growing out of such bond; and

3. Appointing a special master and charging him with the duty of hearing the claimants and reporting upon the manner in which the fund deposited in the registry, less specified fees and costs, should be distributed among the claimants.

No appeal was taken then or thereafter from that decree; and it remained in full force and effect.

In due course hearings were had and evidence was produced before the special master, after which he submitted a report containing his findings of fact, conclusions of law and recommendations for a distribution of the fund, less fees and costs, among the several claimants upon a pro rata basis. The report also contained a statement showing what he found to be the true and full amount of each claim, the total being in excess of $60,000.00, and a further statement showing the amount which, on a pro rata distribution would be payable on each claim. As to Dugas' claim the master reported the true and full amount as $4,160.68[4] and the pro rata share of the fund payable on the claim as $1,141.29.

Shortly after the special master's report was submitted the several claimants, including Dugas, entered into and filed in the suit a written stipulation declaring that they acquiesced in the report, waived the time allowed for filing exceptions, and requested the court to confirm the report and make it the court's decree.

April 20, 1933, the court, with the special master's report and the stipulation before it, rendered a decree confirming the report and directing that the balance of the fund in the registry be distributed among the several claimants in accordance with the master's recommendations. No appeal was taken from this decree.

The fund was distributed and paid out accordingly and was thereby exhausted. Dugas accepted the pro rata share accorded to him in the master's report and the confirming decree.

March 7, 1934, Dugas brought a suit in the Louisiana court before mentioned against the New York Casualty Company, the surety on the appeal bond given in his earlier suit on the qualifying bond. In this new suit he asserted that the American Surety Company, defendant in the earlier suit and principal in the appeal bond, had not diligently prosecuted its appeal, but, on the contrary, had brought the interpleader suit in the federal court and had obtained therein an injunction which in effect prohibited him from securing a determination of the appeal; and that it had thereby abandoned the appeal and violated the condition of the appeal bond. While the new suit was based on an asserted breach of the appeal

[4] The master found Dugas' disability was materially relieved at the time the hearing began (October 26, 1932) and recommended that his claim be allowed at $20.00 per week for the 127 weeks preceding the hearing, at $8.00 per week for 173 weeks, discounted at 8%, and at $250.00 for medical bills and $97.40 for costs and expert testimony, making a total of $4,160.68.

bond by the principal, it was brought against the surety alone. The relief prayed was a judgment in Dugas' favor for $3,019.39, being the difference between the amount of his workmen's compensation claim as ascertained in the interpleader suit and the sum allowed and paid to him in that suit as his pro rata share of the fund arising from the deposit in court of the full amount of the qualifying bond. By an amended petition the amount for which judgment was prayed was reduced to $2,999.00 to forestall a removal to the federal court.

To the new suit the New York Casualty Company interposed the exception of prematurity, among others. The court sustained that exception, without ruling on the others, and dismissed the suit. Dugas appealed to the Supreme Court of the State, which, on January 7, 1935, reversed the judgment of dismissal and remanded the suit for further proceedings.[5]

January 29, 1935, the American Surety Company, with the leave of the federal court, filed in the interpleader suit a supplemental bill in which it set forth the matters and proceedings occurring after the decree of September 19, 1932, in that suit; alleged that the judgment of April 14, 1931, against the American Surety Company and in favor of Dugas in his earlier suit in the state court was based entirely on the qualifying bond of February 12, 1930, given by the Lumbermen's Reciprocal Association as principal and the American Surety Company as surety; that by the decree of September 19, 1932, in the interpleader suit, to which Dugas was a party, the American Surety Company was declared to have complied with all of its obligations under the qualifying bond and was released and discharged from any and all further liability on account thereof; that by that decree Dugas was enjoined from instituting or prosecuting in any other court any suit against the American Surety Company on account of any right or claim growing out of such bond; that Dugas' suit in the state court against the New York Casualty Company was brought on the appeal bond given by the American Surety Company as principal and the New York Casualty Company as surety on the appeal taken by the American Surety Company from the judgment of April 14, 1931, on the qualifying bond; that if Dugas should collect any sum from the New York Casualty Company in his suit against it as surety on the

[5] Dugas *v.* New York Casualty Co., 181 La. 322.

appeal bond, the American Surety Company, as principal on that bond, would be bound to reimburse such surety; and that in these circumstances Dugas' suit against the New York Casualty Company was essentially an effort to enforce the judgment of April 14, 1931, which was based solely on the qualifying bond, and therefore was an attempt indirectly to subject the American Surety Company to further liability on account of that bond contrary to the decree of September 19, 1932. Accordingly, and in aid of the decrees in the interpleader suit, the supplemental bill contained prayers for an injunction restraining Dugas from further prosecuting his suit against the New York Casualty Company and for general relief.

To the supplemental bill Dugas filed pleas challenging the jurisdiction of the court, its power to enjoin proceedings in the state court, and the sufficiency of the case stated. The pleas were overruled and Dugas answered. Upon the final hearing the court found the facts to be as alleged in the supplemental bill and held that Dugas' suit against the New York Casualty Company as surety on the appeal bond was essentially an effort to enforce against the American Surety Company the judgment which he had obtained against it as surety on the qualifying bond, and therefore was in contravention of the spirit, if not the letter, of the decrees in the interpleader suit; and on that basis the court gave a supplemental decree specifically enjoining Dugas from further prosecuting his suit in the state court against the New York Casualty Company. Dugas appealed and the Circuit Court of Appeals affirmed the decree, one judge dissenting. 82 F. (2d) 943. The case is here on certiorari.

Mr. Justice VAN DEVANTER, after making the foregoing statement, delivered the opinion of the Court.

1. The amount or penalty of the qualifying bond was $20,000.00. The surety's obligation was not to Dugas alone, but to the other claimants as well; and this obligation was not to pay all claims regardless of their aggregate, but to pay $20,000.00, or so much thereof as should be needed, and no more. Because the claims exceeded $20,000.00, the surety paid that sum into the registry of the federal court, there to abide the court's decree, and at the same time brought in that court its interpleader suit against all claimants, including Dugas, to the end that its liability on the bond

might be terminated, and that the rights of the several claimants in the amount of the bond so paid into court might be judicially determined and the fund distributed accordingly.

2. The Interpleader Act of 1926, under which that suit was brought, makes provision for the filing in a federal district court of a bill of interpleader by a surety company which has executed a bond in the sum of $500.00 or more, under which two or more claimants, citizens of different States, assert adverse rights to the penalty; authorizes the payment of the amount of the bond into the registry of the court, there to await such disposal as the court may direct; and further provides in the latter part of § 2 and in § 3:

"Sec. 2. . . . Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any other Federal court . . . on such bond . . . until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found."

"Sec. 3. Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be suitable and proper, and issue all such customary writs as may be necessary or convenient to carry out and enforce the same."

By plea and answer Dugas objected to being brought into the interpleader suit and grounded the objection upon the judgment, appeal and appeal bond in his earlier suit in the state court; but the objection was overruled, and the cause proceeded to the rendition of two related decrees.

In one decree, given September 19, 1932, the complainant surety, by reason of its payment of the amount of the qualifying bond into the court's registry, was discharged from any and all further liability on account of that bond, and the several claimants, including Dugas, were enjoined from instituting or prosecuting against the complainant surety, so discharged, any suit on account of any claim or right growing out of such bond. In the other de-

cree, given April 20, 1933, the court determined the rights of the several claimants, including Dugas, in the fund paid into the registry, and directed its distribution among them on a pro rata basis—this decree being in exact accord with a stipulated request by all claimants, including Dugas.

Taken together, the two decrees not only completely terminated the liability of the complainant surety on the qualifying bond, but also fixed the full measure of Dugas' right or claim under the bond, and in necessary effect determined that the judgment, appeal and appeal bond in his earlier suit in the state court did not put his claim beyond the reach of the interpleader suit, or require that it be dealt with differently from other claims.

Plainly the court had jurisdiction of both the subject matter and the parties. No appeal was taken from either decree. Therefore Dugas was bound by both decrees. Had he exercised his right to appeal he could have obtained a review of the rulings on his objection to being brought into the suit, on the bearing and effect of the prior judgment and proceedings in the state court, and on the right of the complainant surety to be discharged from further liability in respect of his claim. But these rulings were all made in the exercise of the court's jurisdiction, were subject to challenge and reexamination only on appeal, and became conclusive on him in the absence of an appeal.

3. In the interpleader suit there was an actual, complete and judicially sanctioned payment of the qualifying bond by the surety, and it was on this basis that the surety was discharged from all further liability. While the payment was into the court's registry, and not directly to the claimants, it nevertheless was a lawful and effective payment under the Interpleader Act. In effect the first decree converted the claims under the bond into claims against the fund paid into the registry; and the second decree, made after a hearing in which all claimants were heard, directed and brought about a distribution of the fund among them according to their ascertained rights.

As Dugas' judgment in the state court was based solely on the qualifying bond, the payment of the bond and discharge of the surety, as effected in the interpleader suit, operated, under recognized principles of law and equity, to extinguish his right under the judgment. He relied on the judgment in his several pleadings

and the decrees fixed the measure of his claim conformably to the judgment. Even the costs awarded to him by the judgment were included in the computation. Thus it is plain that the interpleader suit and the decrees therein dealt with his claim as it was embodied in and evidenced by the judgment.

4. Whether, in subsequently bringing suit in the state court on the appeal bond, Dugas contravened the fair intendment of the decrees in the interpleader suit is the principal question arising on the supplemental bill. Both courts below answered the question in the affirmative.

The appeal bond was in the nature of a security for the satisfaction of the judgment in Dugas' suit on the qualifying bond; and in attempting to enforce this security he obviously was seeking to realize on the judgment. If his right under the judgment was extinguished he was not entitled to resort to the security; for the relation of one to the other was such that the extinguishment of his right under the judgment terminated his right in the security.[6]

It already has been shown in this opinion that his right under the judgment was extinguished by the proceedings and decrees in the interpleader suit.

With this understanding of the operation and effect of the decrees in that suit, it becomes plain that Dugas' action in bringing suit on the appeal bond and thereby attempting to realize on the prior judgment, notwithstanding the extinguishment of his rights under it, was in contravention of those decrees.

His counsel contends otherwise, and seeks to support the contention by pointing out that the injunction did not directly forbid Dugas from suing on the appeal bond, but only from instituting or prosecuting any suit against the complainant surety on account of a right or claim growing out of the qualifying bond. But the injunction, being only one part of the decrees, is not the exclusive criterion of what was determined and effected by them. Its purpose was to forestall anticipated departures, not to limit other provisions or restrict their operation and effect.

By the other provisions it was adjudged that the complainant surety had complied with all of its obligations under the bond by

[6] Cage's Executors *v.* Cassidy, 23 How. 109, 116; Carpenter *v.* Longan, 16 Wall. 271, 275; Dodge *v.* Freedmans Co., 93 U. S. 379, 382; United States *v.* Choteau, 102 U. S. 603, 610-611. And see Illinois Surety Co. *v.* Peeler, 240 U. S. 214, 225.

paying the amount of the bond into the court's registry; that, by reason of this compliance, it was discharged from any and all further liability on account of the bond; and that the several claimants under the bond, all of whom had been brought in and heard, were entitled to designated portions of the fund so paid into the registry. Under this last provision each claimant was paid his portion, the fund being thereby exhausted. It also was adjudged that the fact that Dugas' claim was embodied in and evidenced by a judgment did not make it other than a claim under the bond or take it without the reach of the interpleader suit. He acquiesced in that and other rulings; and the amount of his claim and his proportionate share of the fund were fixed conformably to the judgment. He acquiesced also in this, and accepted the share so allotted to him. In this way the other provisions in the decrees accomplished, as they were intended to do, the extinguishment of his right under the judgment; and they did this independently of the injunction.

Of the decisions under state interpleader statutes which are cited as if making for a different conclusion, it is enough to say, first, that in none was the statute substantially identical with the federal act of 1926; and, secondly, that in such as involved questions approximately like those presented to the district court in the original suit there were locally appropriate applications for the exercise of appellate authority before the rulings became conclusive, which was not the case here.

Some reliance is placed on the fact that the suit on the appeal bond was against the surety thereon alone. But this does not make for a different result. As Dugas' right under the judgment was extinguished he was no more entitled to realize on the judgment by suing the surety on the appeal bond than by suing the principal. Besides, the surety, if cast in the suit and compelled to pay, would be entitled to reimbursement by the principal. The latter, therefore, may be heard to complain in the circumstances shown here.

5. The jurisdiction to entertain the supplemental bill is free from doubt. Such a bill may be brought in a federal court in aid of and to effectuate its prior decree to the end either that the decree may be carried fully into execution or that it may be given fuller effect, but subject to the qualification that the relief be not

of a different kind or on a different principle.[7] Such a bill is ancillary and dependent, and therefore the jurisdiction follows that of the original suit, regardless of the citizenship of the parties to the bill or the amount in controversy.[8]

6. The power of the court to enjoin Dugas from further prosecuting his suit in the state court on the appeal bond has full support in §§ 2 and 3 of the Interpleader Act of 1926 before quoted, as also in settled adjudications respecting the power of a federal court to protect its jurisdiction and decrees.[9]

Decree affirmed.

The CHIEF Justice and Mr. Justice CARDOZO are of opinion that the decree should be reversed for the reasons stated by Sibley, J., in the court below.

Mr. Justice STONE did not participate in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[7] Story's Equity Pleading, 9th Ed. § 338; Root *v.* Woolworth, 150 U. S. 401, 410-412; Local Loan Co. *v.* Hunt, 292 U. S. 234, 239.

[8] Root *v.* Woolworth, *supra*, p. 413; Local Loan Co. *v.* Hunt, *supra*.

[9] French *v.* Hay, 22 Wall. 250; Root *v.* Woolworth, *supra*, p. 411; Julian *v.* Central Trust Co., 193 U. S. 93, 112; Madisonville Traction Co. *v.* Saint Bernard Mining Co., 196 U. S. 239, 245; Looney *v.* Eastern Texas R. R. Co., 247 U. S. 214, 221; Wells Fargo & Co. *v.* Taylor, 254 U. S. 175, 183.